562.

SUPREME COURT OF THE UNITED STATES.

No. 147.

E. P. FOURNIQUET & WIFE, APP'TS,

vs

JOHN PERKINS.

APPEAL FROM THE CIRCUIT COURT U. S. FOR THE DISTRICT OF LOUISIANA.

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EDWARD P. FOURNIQUET et ux.,
vs.
JOHN PERKINS. } 1,267

Circuit court of the United States, fifth judicial circuit, district of Louisiana.

Pleas and proceedings before the honorable Theodore H. McCaleb, district judge of the United States for the district of Louisiana, and one of the judges of the circuit court of the United States for the fifth judicial circuit, (the honorable John McKinley, presiding judge, absent,) at a circuit court of the United States for the fifth judicial circuit, begun and held at the city of New Orleans, in the district aforesaid, on the tenth day of April, anno domini one thousand eight hundred and forty-five.

Be it remembered that heretofore, to wit, on the 22d day of June, A. D. 1844, came the complainants, Edward P. Fourniquet and Harriet Jane Fourniquet, his wife, by their solicitor, John Henderson, esq., and filed in the clerk's office, of the court aforesaid, their bill of complaint against the defendant, John Perkins; which bill of complaint is in the words and figures following, to wit:

"To the honorable the judges of the circuit court of the United States, for the fifth judicial circuit, in and for the eastern district of Louisiana, in chancery sitting:

Your orators, Edward P. Fourniquet, and Harriet Jane Fourniquet, his wife, citizens of the State of Mississippi, as heirs and legal representatives of their father, Benjamin Bynum, and also as heirs and legal representatives of their mother, Mrs. Mary Perkins, humbly complaining, sheweth to your honor that John Perkins, then and now a citizen of the State of Louisiana, on the 12th day of August, A. D. 1818, intermarried with the mother of your orators, Mrs. Mary Bynum, widow of Benjamin Bynum, aforesaid, then a resident citizen of the parish of Concordia and State of Louisiana.

Your orators shew that, by reason of said marriage, the said Perkins took the control and management of all the property which belonged to your orators and their co-heirs, out of the estate of their father, Benjamin Bynum aforesaid, as well as the separate property belonging to their said mother, both her community property of the estate of Benjamin Bynum, as well as the property belonging to her by inheritance.

Your orators shew that, so far as the said Perkins extended his control and management over the property belonging to Benjamin Bynum's estate, that it was illegal, null, and void, and in direct violation of the laws of Louisiana, where the property was situated, and where the said Perkins controlled it, *from the 12th of August, A. D. 1818, until 29th May*, 1827. The control and management of the said

Perkins *was illegal, null, and void*, for the following reasons: Firstly. Because the said Perkins was never appointed administrator of the estate of Benjamin Bynum, or gave bond as such, until the 29th May, A. D. 1827. *Secondly*. Because the said Perkins was never appointed guardian to your orator, Harriet, or her co-heirs, until 29th May, 1827. *Thirdly*. Because there was no family meeting called to sanction the marriage of said Perkins with the mother of your orators.

Your orators shew, that at the date of the marriage of the said Perkins, 12th August, A. D. 1818, Mrs. Bynum had the 5 following children, namely: Nancy, aged about 12 years; Benjamin, about 10; Mary, about 8; Harriet, about 4; and Francis, about 2 years of age. Francis died in , leaving four surviving children, your oratrix, Harriet, being about that time 4 years of age.

Your orators shew that the said Perkins had no inventory or appraisement made of the estate of your orator's father, Benjamin Bynum, nor of your orator's mother, Mrs. *Mrs*. Mary Perkins, at the date of his marriage, nor for nearly 9 years thereafter. They are therefore obliged to refer to the inventory and appraisement made of their father's estate, on the *8th day of February, A. D.* 1816, (a copy of which inventory and appraisement is herewith presented, marked A, and is prayed to be made an exhibit to this bill.) By which inventory and appraisement it appears that the estate of your orator's father consisted of 46 *negroes*, 1,000 *arpents of land, situated on Lake Concordia, valued at* $4,000, *cash on hand* $1,000, *open accounts, due the estate* $360, *personal property, consisting of live stock, farming utensils, &c.*, $2,312.

Your orators shew, and so the facts are, that the 46 negroes named in the inventory of 1816, without a single exception, were the negroes, with their increase, which your orator's father brought with him from South Carolina, when he emigrated to the State of Louisiana, in the year 1811 or 1812; which negroes were, therefore, not community property.

Your orators shew that the use of the aforesaid 46 negroes enabled your orator's mother, during the *widowhood*, to purchase the following 10 *negroes*, viz: Sarah, aged 30; Nathan, 3; Orney, 14; Ben, 13; Caleb, 14; Abraham, 13; *Judah*, 26; Rose Davidson, 13; Black Maria, 15; Sam, 14; and yellow Maria, 15 years old, thereby increasing the Bynum force to 56 negroes. In addition to which, your orator's mother acquired, by inheritance and purchase from the estate of Francis Bynum, African John and James; she also acquired, by inheritance from her brother William Reeves, the following negroes: Lucy, aged 40; Rose, 22; Selma, 20; Jack, 16; Jim, 11; Lucy 8; and Peter, 14 years old; also, by the death of her brother Henry Reeves in 1822, the negroes, Abb, 35, and her son George, 17. Of these negroes, Peter and James died before the division of Mrs. Perkins' estate, making the entire force amount to 66 *negroes*.

Your orators shew, that for want of any documents or vouchers of that day to refer to, and by reason of the culpable neglect of the said

Perkins, in not causing an inventory to be made at the date of his marriage, they are therefore obliged again to refer to extraneous testimony, upon which to found their present examination. By the tax list of the parish of Concordia, *dated March*, 1818, a few months before the marriage of the said Perkins, it appears that the Bynum estate was taxed for 66 *negroes*, 15 *horses and mules*, 70 *head of horned cattle*, *and* 1,000 *arpents of land*, valued at $4,000. The 1,000 arpents of land, taxed as above, was situated on Lake Concordia, in the parish of Concordia, and now forms one of the valuable plantations of Samuel Davis, esq., on which was cleared about 300 acres of land, with the usual appurtenances of mill, gin, dwelling house, and negro cabins.

Your orators represent, that the said estate was entered unincumbered, and, indeed, had cash loaned out and due to it, to the amount, as your orators believe, of $5,727 03¾, which was afterwards collected by said Perkins, in part, as follows: May 2d, 1820, from Henry Rives, $196. January 3d, 1831, David and Thomas Alexander, $1,115 $\frac{69}{100}$. May 29, 1827, Francis Bynum, $366; money loaned Mr. Rives, $1,087 18¾; Turner Bynum, $63 $\frac{90}{100}$. April, 1823, collected from the estate of Henry Reves, junr., $216 $\frac{66}{100}$; of which amount $1,517 18¾ has been reported by the said Perkins, and the balance, believed to have been collected, $1,528 $\frac{35}{100}$, yet remains to be accounted for. Mrs. Bynum received likewise, in the month of January, 1818, from Charles Reves, curator on the estate of Henry Reves, senr., $1,400; and from the estate of Wm. Reves, $1,281 $\frac{60}{100}$. These two last items are referred to only to shew the situation of the Bynum estate on or about the time of the marriage.

Your orators show, that at the time the said Perkins married your orators' mother, he was engaged in planting on a place of his own on the Mississippi river, in the said parish and State, called *Somerset*.

Your orators shew, that according to the tax list before referred to, *dated March*, 1818, the said Perkins is taxed for 58 *negroes*, 60 *head* of horned cattle, 12 horses, 1,077 *acres* of land, valued at $1,000; of this land 677 acres formed the said Perkins' Somerset plantation, and the balance was situated in other parts of the parish of Concordia. Thus, the aforesaid tax list represents the said Perkins as possessing 8 *negroes*, 10 *head of cattle*, *and* 3 *horses*, LESS than the estate that fell into his hands by reason of the marriage aforesaid.

In addition to the foregoing relative situation of the property belonging to the estate of Bynum and the said John Perkins, your orators aver, and such the facts are, that the said Perkins was greatly embarrassed at or about the time of his marriage, owing to the low price of cotton consequent upon the stagnation of commerce during the war, and also owing to a *purchase of* 20 *negroes*, made by said Perkins from Francis Bynum, (a brother of your orators' father,) on the 13th of April, 1812, *on a credit of* 10 *years*, for the large sum of $26,660; for which purchase the said Perkins executed his 10 several promissory notes, payable on the 10*th* of March of each and every year thereafter, for $2,660 each.

In addition to the foregoing heavy purchase, the said Perkins was

likewise indebted to the Bank of the State of Mississippi, a chartered institution, at that time situated at Natchez, for the amount of two notes discounted by said institution, for the use of the said Perkins, as follows: 12th of September, 1817, $3,000. 19th September, 1817, $1,000; which two notes were paid by said Perkins on the 10th May, 1822.

Your orators have thus shown a heavy indebtedness existing against the said Perkins, at the date of his marriage, and that the Bynum estate was not only out of debt, but actually had a considerable amount of money due to it, which was afterwards collected by said Perkins, as your orators aver and believe.

Your orators shew, that during the years 1818 and 1819, the said Perkins suffered the Bynum property to remain together, and to be worked upon the plantation of your orators' father, on Lake Concordia. But shew, *that the said Perkins, in* 1820, (without the sanction of the probate court, and without being in any wise authorized by law to control or manage said estate,) removed the negroes, stock, farming utensils, and other personal property belonging to the Bynum estate and his wife's separate estate, to the neighborhood of his Somerset plantation, where he employed the said property in cultivating cotton, corn, &c., and in clearing and improving his said Somerset plantation and the adjacent lands, *until the year* 1828.

In 1827, Nancy S. Bynum, the oldest child, being about to marry, required from the said Perkins her proportion of the property belonging to her, out of the estate of her father, Benjamin Bynum, and her mother, Mrs. Mary Perkins. Whereupon, the said Perkins applied to the probate court of the parish of Concordia, and was appointed curator ad bona and tutor to the minor heirs of Benjamin Bynum and Mrs. Mary Perkins, and duly qualified himself, by giving bond; *upon the 29th day of May, A. D.* 1827, he rendered to the said probate court, as curator and tutor aforesaid, his accounts, copies of which accounts are herewith presented, marked *B and C*, which are prayed to be made part of this bill.

Your orators show, that the said Perkins pretends that his appointment as curator and tutor, in 1827, possessed a retrospective operation, *and legalized all his acts from* 1818 *up to the rendition of his accounts*, and his accounts were thereupon rendered, extending over all those years, when he was knowingly and wilfully acting in direct violation of law. A more charitable interpretation of his acts, than a wilful disregard of the requirements of the law, cannot be accorded to him, for the said Perkins had, for a number of years, acted as clerk, and afterwards as judge, of the probate court of the said parish of Concordia, and his official signature is attached to the inventory of 1816, before referred to.

An examination of Exhibits *B & C* shows the following improbable results: The said Perkins, in his account against the succession of Mrs. Mary Perkins, charges himself with the crops of cotton alleged by him to have been raised on the Bynum plantation in 1818, 85 bales, which sold in New Orleans for $6,672 $\frac{08}{100}$, and, in 1819, 68 bales, which sold for 4,100 $\frac{01}{100}$. Your orators shew, that both these crops of cotton

were shipped by said Perkins in his own name, and to his own merchant, and sold and credited to his individual account; and, while he reports to your orators 85 bales as their crop of 1818, and for the year 1819, 68 bales, with 8 hands less force he claims to have made on his Somerset plantation, in 1818, 210 bales, and in 1819, 205 bales. This extraordinary disparity of cropping, so much to the detriment of your orators, unfortunately continued, according to said Perkins' account, through the years 1820, 1821, 1822, 1823, and 1824, subsisting the community, and after he had removed the Bynum negroes, stock, &c., to his Somerset plantation; for while, during those years, said Perkins' merchant sold, as the proceeds of his Somerset plantation, 1,154 bales of cotton, raised by an inferior force, he reports, for the Bynum hands, 286½ bales for the same and all those years.

Your orators are unable to examine the relative crops for the two remaining years over which his account extends, namely, 1825 and 1826. But a reference to his said account shows, that he allowed the Bynum heirs, for 1825, 76½ bales of cotton, weighing 30,434 lbs., and for the year 1826, 57 bales, weighing 22,826 lbs.; thus allowing, for the use of the Bynum force for the years he retained it at Somerset plantation, 60 bales of cotton per annum, or less than 1 bale for each negro per annum; the net products of which, when sold in New Orleans, he states to have been $21,568 $\frac{20}{100}$, with the addition of $1,000 for the year 1823, *when, said Perkins alleges, no cotton was made.* From which sum of $22,568 $\frac{20}{100}$, he deducts $1,500 per annum for each and every year, for the general expenditures for the use of the hands, or $10,500, (by which charge, your orators suppose, the said Perkins intends to represent the amount required for the support and clothing of the Bynum negroes,) thus reducing the revenue of your orators and the co-heirs to $1,724 $\frac{03}{100}$ per annum.

A further examination of this account shows, that all the charges and credits therein are founded, not upon actual receipts and expenditures, but upon such arbitrary amounts as the said Perkins thought proper to allow. As thus, he assumes, that the crops raised upon the Bynum plantation, in 1818, was 85 bales, weighing 35,202 lbs., and the crops of 1819, 68 bales, weighing 25,666 lbs., which gives an average for those 2 years of 30,434 lbs. of cotton, which average the said Perkins assumes to be a criterion for those years, when the Bynum force was worked on his Somerset plantation, and he goes on and gives your orators and their co-heirs credit accordingly, except for the year 1823, when, he alleges, no cotton was made, (which, your orators aver, was not a fact;) and the years 1824 and 1826, when he deducts from the average quantity for overflow, ¼, and allows 22,826 lbs.; thus making your orators responsible for his pretended losses, and at the same time refusing to allow them the smallest participation in his gains. The charges against your orators and their co-heirs are equally arbitrary, unjust, and oppressive, and are founded, not upon the actual sums expended for the use of the Bynum children, but upon the unrestrained and cormorant will of said Perkins. He charges, uniformly, $1,500 per annum for the

general expenditures for the use of the hands, and $4,000 for the support of the children, or $1,000 for each, per annum.

The said Perkins thus pretending, that the labors of the Bynum negroes, which, in 1818, numbered 66, and in 1827 had increased, by the shewing of the said Perkins, to 82 negroes, was insufficient to support and school the four children. That to do so, it not only absorbed all the revenue derived from their labors, but $3,771 $\frac{08}{100}$ of moneys belonging to the estate, which the said Perkins, by his *by his* account, acknowledges to have received; and that, even with that assistance, the Bynum estate fell behind and in his debt $7,388 61¼ cents. Thus, it would require the annual labors of 43 negroes, at the rate of hire allowed by said Perkins, for the support of your oratrix, Harriet, from 6 years of age upwards; a result so preposterous, that the utmost stretch of credulity rejects it.

But fully to understand the result of the said account, your orators sum it up as follows:

Amount allowed by Perkins for the use of the Bynum negroes, which, in 1818, numbered 66, and 1827, 82; from 1818, up to and including the year 1826 - - - -		$32,340 29
Amount allowed, in cash, for use of hands in 1823 -		1,000
Amount carried forward - -		$33,340 29
Amount brought forward - -		$33,340 29
Charged by said Perkins for general expenditures for use of hands during same years - -	$12,500	
Same, for general expenditures for the use of the children during the same time - -	32,000	
		44,500
Which leaves the minors in his debt - -		11,159 71
Part of which debt was paid to said Perkins by cash due the estate, and collected by him - - -		3,771 08
Minus - - -		$7,388 63

Your orators believe that the foregoing examination proves the account of the said Perkins to be unjust, oppressive, and fraudulent, upon its very face. In addition to which your orators are fortified with divers evidence, which goes to prove that the said Perkins did not expend for your oratrix, Harriet, the one thousand dollars per annum for her support and schooling, as set forth in his accounts.

Your orators represent, and so the facts are, that your oratrix, Harriet, when about eleven years of age, was sent by the said Perkins to Baltimore, where she remained for about five years an inmate of the family of Doctor James Smith; that, during her said stay, her yearly expenses, for board, schooling, and clothing, was but five hundred dollars—$500 per annum, and no more; which is fully proved by the account of the

said Doctor James Smith, herewith presented, marked *D*, which is prayed to be made part of this bill.

Your oratrix, Harriet's, expenses, thus proved to have been but $500 per annum from her 11th to her 17th year, it is inferred they did not amount to $1,000 per annum from her 4th to her 11th year, when she was living with her mother, and for three years of which time she was too young to require education; and in fact did not go to school until 1821.

Your orators represent that the said Perkins, imposing upon the confidence of the parish judge of the parish of Concordia, induced him to allow his said account; and it was thereupon *received by the court without vouchers* to substantiate it—the said parish judge requiring no further proof of the truth and fairness of said account but the oath of the said Perkins.

On or about the date of the marriage, as has been before shown, the estate of Benjamin Bynum had five thousand seven hundred and twenty-seven dollars three cents, $5,727 03, due to it, of which, as your orators believe, $3,045 43 was afterwards collected by the said Perkins. At the same time, as your orators have shown, the said Perkins was largely indebted; of which debts, your orators aver and believe, the following were paid from 1818 until 1827, namely: 18th August, 1818, to Francis Bynum, $2,660; April 18, 1821, same, $2,660; June 1st, 1822, same, $2,660; 3rd May, 1819, paid by Alvarez Fisk, the merchant of said Perkins, and charged to his account, one other of the said notes, $2,660; June 27th, 1820, $2,660; ——— 1824, same, $2,660; May 10, 1822, paid to the Bank of the State of Mississippi, the amount of the said Perkins' two notes discounted by said institution, as has been before shown, namely, $4,000; showing a sum total of 19,960 dollars of debts due by said Perkins before his marriage, and paid between the years 1818 and 1827. By the tax list of the parish of Concordia, *March*, 1818, the said Perkins, as has been before shown, was taxed for 1,077 acres of land, valued at $1,000; by the tax list of 1826, he is taxed for 3,926 acres of land, valued at $21,200—showing an increase of his landed property, in the parish aforesaid, of 2,849 *acres*, at an increased value of $20,200.

During the same years the said Perkins purchased, in the State of Mississippi, the following property, namely: on the 30th October, 1818, from Arthur Mahon, a tract of land in the neighborhood of the city of Natchez, containing 99 $\frac{26}{100}$ of acres, for the sum of 9,926 dollars; on which land the said Perkins established an expensive establishment called the Briers, at a cost, as your orators believe, of not less than 20,000 dollars.

January, 1819, purchased from Elihu Hall Bay 2,100 acres of land, in Claiborne county, Mississippi, at a cost of 5,000 dollars.

March, 1824, purchased from Sugars Turner, in same county and State, 1,000 acres of land, at a cost of 1,000 *dollars*.

Your orators, by the above examination, show that, from 1818 *until* 1827, *when the said Perkins pretends to have brought your orators*

and their co-heirs in his debt, $11,159 71, *he, with a less force, goes on and pays* 19,960 *dollars of his old debts, and acquires, in the State of Louisiana, and elsewhere*, real estate to the *amount of* 56,126 *dollars, or a gain, on his part, during the same years, of* 76,086 *dollars*.

Your orators show that the said Perkins, beside the wrongs and injuries above enumerated, laid claims to, and now retains, or has disposed of the following property belonging to the estate of Benjamin Bynum and Mrs. Mary Perkins, namely:

Negro Cook, one of the negroes brought by Benjamin Bynum from South Carolina, and valued, in the inventory of 1816, at $550. *Woman Lucy*, valued, in inventory of 1827, at $250. *Boy Arthur*, valued in same inventory at $250. *Woman Abby*, valued at $350; *and her son George*, $400. *Girl Lucy*, valued at $300. Six negroes retained, in value equal to $2,100.

Your orators show, and so the facts are, that of the fifteen horses and mules which appear in the tax list of March, 1818, and which your orators charge passed into the keeping of the said Perkins in 1820, when he removed his stock, &c., to his Somerset plantation, he, in the inventories and appraisements of the estates in 1827, allowed to the estate of Benjamin Bynum 4 *mules*, and to the estate of Mrs. Mary Perkins 2 *mules*, and no horses—the 9 remaining horses, or mules, were retained by said Perkins, or died while being worked in the cultivation of the Somerset plantation; which horses or mules your orators aver were worth $50 each; for which they claim, from said Perkins, remuneration in their proportionate share.

Your orators further show, that of the 70 *head* of horned cattle taxed to the Bynum estate in 1818, which your orators aver were driven to Somerset in 1820, by the agent of said Perkins, Mr. James Miller, the said Perkins, in the inventory rendered in 1827, pretends *had decreased to* 60 *head;* thus retaining of the said cattle ten of the original number, and all the large increase of said stock, and appropriating them to his own benefit.

What amount of farming utensils, and implements of husbandry, were taken, by the said Perkins, to his Somerset plantation in 1820, your orators are unable, at this late day, to establish; but it is reasonable to suppose that a force of 66 negroes must have been possessed of a correspondent supply of tools to labor with; whatever the amount of tools may have been, the inventory of 1827 shows that the said Perkins has accounted for none such, *except a chest of tools valued at five dollars*.

Your orators show, and so the facts are, that the said Perkins, without sanction of law, removed several of the negroes belonging to the Bynum estate to the State of Mississippi, and employed them as servants about his establishment, in the neighborhood of Natchez, as follows: Mony, Nathan, Sarah, Nace, Arthur, Lucy, and Wheeler. Two of these negroes, Lucy and Wheeler, died at Natchez; both these negroes were brought from South Carolina by Mr. Bynum, and are valued,

in the inventory of 1816, *Lucy* $400, *Wheeler* $600; for which negroes your orators claim their proportionate remuneration, and for the remaining negroes a reasonable amount of hire, while so retained by said Perkins.

Your orators also claim their proportionate remuneration for the following negroes, who died at Somerset plantation during the time the said Perkins, without sanction of law, retained possession of the Bynum property, namely: Cloe, aged 35; Zinger, 27; Nace, 30; Sally, 28; Jim, 28, killed by the falling of a tree; Jacob, 29; Jenny, child of Mnoy, 4; Miles, 5; Peter, Cook's child, 5; Eliza, Dinah's daughter, 5; Harry, child of Jane, 6; Solomon, child of Milly, 1; Jim, the child of Milly, 3; Abby, the child of Cook and Lucy, 3.

Your orators represent, that it is not alone the inadequate remuneration which the said Perkins has thought proper to allow your orators and their co-heirs, for the use of their negroes, nor yet of the exorbitant charges which he has brought against them, of which they complain, and for the redress of which they humbly apply to your honor; they likewise sustained a heavy, a very heavy, loss, by reason of the illegal and unauthorized abandonment of their father's plantation on Lake Concordia, on which, as has been before represented, there was a good gin-house and other necessary improvements, and the product of which, during the widowhood, was not only sufficient to support the family and enable the widow to purchase the 10 negroes before named, but also to allow her to loan considerable sums of money to several of her near relations, who were not in as prosperous a situation as your orators' mother.

Your orators shew, that after the removal of the Bynum negroes, stock, &c., to Somerset, the said Perkins hired the Lake plantation to several tenants, until one of his tenants burnt down the gin-house; after which the plantation could not be rented, and remained for a number of years deserted, for which rent, it appears by the account of 1827, the said Perkins received $2,620, which sum, with the cash collected by him from other sources, as has been before set forth, went to pay in part the pretended debt of said Perkins against your orators and their co-heirs.

Your orators shew, that about the month of February, 1828, (the year of the greatest overflow within the knowledge of the oldest of our river planters,) the said Perkins, finding that there was no prospect of profitably using the Bynum force at Somerset that season, not wishing to incur even the expense of supporting them, and knowing that young Mr. Bynum would probably, by the next season, return from the north and claim the negroes, he, the said Perkins, determined to return them to the old plantation on Lake Concordia; and it will be in testimony before your honor, that so entirely regardless was the said Perkins of the interest of his step-children, and careless as to the health of their negroes, that he sent most of their negroes from Somerset to the Lake plantation in a *flat boat*, in the month of February, and at a time when the overflow was so universal that the flat boat in which they left the Somer-

set plantation was floated across from the Mississippi river to Lake Concordia, a distance of some 8 miles, and lashed to the posts of the old dwelling house. The Lake plantation, having been abandoned for several years, was found in a most ruinous condition, the gin-house burned, the fences and cabins rotted down, and nothing left standing upon their once prosperous plantation, except the old dwelling-house, and a few of its out-houses, which were also in a dilapidated condition. When the waters receded sufficiently to allow the negroes to work, the first thing that had to be done was to erect shelters for the negroes. Up to that time they had been obliged to remain in the flat boat in which they were floated from Somerset. Destitute of provisions, they were obliged to provide themselves with 500 bushels of corn, from Major Minor, one of their neighbors, and to incur all the other additional expenses which falls to the lot of those who commence a new settlement. In support of which, your orators refer to Exhibit *K*, which is prayed to be made part of this bill.

Thus, your orators and their co-heirs, stripped of every thing *except their negroes*, 60 *head of cattle*, 6 *mules, and a chest of tools, valued at* $5, returned to their father's plantation, not only pennyless, but in debt, and on which plantation every thing had to be done anew, except to clear the land.

While, on the other hand, Somerset, the plantation of the said Perkins, which, in 1818, had between 300 and 400 acres of land cleared upon it, in 1826 had between 600 and 700 acres cleared. The improvements thereon were, a large frame gin-house, running two gins; three large barns, two of hewed cypress and one of frame; the frame barn was 90 by 60 feet; a new two story frame dwelling house, a new set of frame negro cabins, and a kiln of 100,000 brick, to put chimneys to the same. There was about 800 bushels of corn sent to Natchez for sale; oxen broke, and disposed of. There was between 300 and 400 head of cattle, about 500 sheep, and about 50 *horses*, *mares, and mules*. Besides which, as we have before shown, the said Perkins had paid off, of his old debts, nineteen thousand nine hundred and sixty dollars, $19,960, and had acquired property in the State of Louisiana, and elsewhere, to the amount of $56,126.

And all this property, and all these improvements, the said Perkins pretends to have been the result of the *labors of his* 58 *negroes;* while your orators and their co-heirs, with a superior force, worked on the same land, fed by the same food, and governed by the same overseers, the said Perkins pretends, during the same years, fell into his debt $11,159$\frac{71}{100}$. Common experience and common justice must concur to repel such results and conclusions.

Your orators aver, and such the fact is, that the said Perkins, to induce his said wife to consent to the abandonment of the Lake plantation, a measure so palpably to the injury of the Bynum heirs, gave his wife to understand that the removal was made for the purpose of commencing a new plantation for the heirs, in the rear of his Somerset plantation, upon a piece of land about that time purchased from Gemalial Pease

and wife, as your orators believe, which piece or purchase of land contained about 1,500 acres.

Your orators represent, that, in accordance with said understanding, the Bynum negroes took possession of said land, erected thereon a negro quarter, and cleared and fenced a considerable amount of land. While the Bynum negroes remained at that place they were under the management of a Mr. Hoover, an overseer who accompanied them from the Lake place.

Your orators represent, that some time after, and when the Bynum force had made a considerable improvement upon said land, the said Perkins became dissatisfied with this arrangement, and removed the negroes, stock, and other personal property to his Somerset plantation. The said Perkins did not, however, abandon the improvements made by the Bynum negroes; on the contrary, he continued to cultivate it, in conjunction with his other lands, up to the year 1828. Your orators show, that the said Perkins repeatedly, about that time, declared to an inmate of his family, that the Bynum heirs were to cultivate a new place, in lieu of the Lake plantation; *and that it would be much more profitable to them, when they once got it properly into cultivation, than the old Bynum plantation.* But now, so it is, may it please your honor, the said Perkins, since the death of his wife, in 1824, has denied any such understanding and agreement, and *now retains the aforesaid tract of land, with all the other real estate which he purchased during these years, whether situated in Louisiana or elsewhere*, and allowing your orators *and their co-heirs only the sorry pittance, in the shape of hire, which your orators have attempted to set forth.*

Your orators represent, that Benjamin S. Bynum, your orators' brother, remained on Lake Concordia during the year 1828, but disheartened by the overflow, and having no experience as to the usual capability of the country, and knowing nothing of it, but what he learnt from the sad results of that year, determined in 1829 to remove to a place in Claiborne county, Mississippi, called Long Branch; whereupon, he took with him the negroes, &c., belonging to your orator Harriet. After the removal to Mississippi, the said Perkins became the guardian of your orator, Harriet, and in the year 1833 rendered to the probate court of said county of Claiborne his account as guardian, a copy of which account is herewith presented, marked E, which is prayed to be made part of this bill.

Your orators represent, that after their marriage, that is, on the 27th day of May, 1834, the said Perkins presented to your orator, Fourniquet, a copy of his account as guardian in Claiborne county, Mississippi, accompanied with an account, which is herewith presented, marked F, which is prayed to be made part of this bill; an examination of these two accounts shows that the said Perkins brought his step daughter $\$550\frac{81}{100}$ in his debt—whereupon your orator, Fourniquet, without the least suspicion of the fairness of said Perkins' transaction, paid the demand of the said Perkins, by giving him a check on the Planters' Bank, State of Mississippi, for a like sum, which check is herewith presented,

and prayed to be made part of this bill, marked *G*. Your orator Fourniquet, shews, that at the time the said Perkins required the payment of the $550\frac{81}{100}$ dollars above referred to, he stated to your orator, Fourniquet, in general terms, that as his ward was married and, as he expressed it, "his arduous duties had thereby ceased," he wanted something to show that he had finally settled with your orators, or words to that effect; and thereupon presented to your orators a document, in the form of a receipt, which had been prepared by said Perkins before he presented it to your orators for their signature, a copy of which receipt is herewith presented, marked *H*, and is prayed to be made part of this bill. Your orators most solemnly aver, that at the signing of said receipt, the said Perkins exhibited *exhibited* to your orators no other accounts than those above referred to, marked *E and F*, nor did he give your orators to understand that the said receipt was intended to cover any other transactions than those set forth in those two accounts; and your orators signed said receipt under such a belief, and without knowing any of the acts of mal-administration committed by said Perkins in the State of Louisiana, or in the most distant manner suspecting that the said Perkins' acts of courtesy and attention towards your orator, Fourniquet, and his protestations of regard and affection towards his step-daughter Harriet, were intended only to enable him the more fully to deceive and defraud your orators.

The said Perkins succeeded, however, in his design, and your orators acknowledge that they signed the receipt which said Perkins now sets up in bar of the present action. Your orator, Fourniquet, shows, that at the date of the receipt, and for a number of years before and after, he was an officer in the Branch Bank of the United States at Natchez, laboriously engaged in the duties of his vocation; shews that he knew little or nothing about the settlement of estates, and particularly estates in the State of Louisiana; shews that he had never been furnished by said Perkins with any accounts, vouchers, title deeds, bills of sale, or other memorandums by which he could have gained an insight into the situation of your orator, Harriet's, property, while it remained under the charge of the said Perkins in Louisiana. It is a fair inference, that vouchers, memorandums, title deeds, &c., did at one time belong to the estate of Benjamin Bynum, and at the death of said Benjamin Bynum must have passed into the hands of your orators' mother, and at her death in August, 1824, must in like manner have passed into the hands of the said Perkins. Your orators aver, and such the facts are, that if such papers did exist, they have never been suffered to pass from the possession of the said Perkins. Your orators and their co-heirs have never received even so much as the private letters of either their father or mother's estate. This fact, connected with the neglect of said Perkins in causing no inventory to be made at the date of his marriage, at the time of the removal of the Bynum property to his Somerset plantation, nor at the death of his wife in August, 1824, left your orators and their co-heirs entirely in the dark as to the early history of their family and the situation of their estates.

Your orators shew, that the said Perkins having thus constituted himself the repository of the early history of the Bynum family and their possessions, took advantage of his said knowledge, and in the inventory of the estate of Mrs. Mary Perkins, which he caused to be made on the 2nd March, 1827, a copy of which is herewith presented, marked *I*, and is prayed to be made part of this bill, claims for his wife a considerable amount of property, which your orators aver belonged to the succession of their father, as thus: Negro man, Cook; this negro appears in the inventory of the estate of B. Bynum, 1816, and was one of the negroes that was brought by your orators' father from South Carolina. The said Perkins also claims, as her separate property, all the negroes which were purchased during the widowhood, and which negroes, as your orators have before attempted to show, were the product of the labor of the 46 negroes which belonged exclusively to the estate of your orators' father. Your orators infer, therefore, that the only part of these negroes which could be reasonably claimed for their mother, was such a proportion thereof as should be a fair remuneration for the use of the community property, to which your orators' mother was entitled out of the estate of B. Bynum, her first husband, as thus:

One-half of the Lake plantation, valued in the inventory of 1816 at $4,000 - - - - - - - -	$2,000
One-half of the cash on hand, $1,000 - - - -	500
One-half of the amount of the open accounts due the estate, $360	180
One-half of the stock, personal property, &c., $2,312 -	1,156

and one-half of all the monies due the estate of Benjamin Bynum, which your orators have attempted to shew was afterwards collected by said Perkins, and accounted for only in part. Ten per cent. on the amount of the said property, (be the same what it may,) per annum, would, in your orators' opinion, have been the interest the said Perkins should have claimed for the estate of your orators' mother. Your orators may be in error in supposing 10 per cent. per annum a fair remuneration for the interest of your orators' mother; but your orators are certainly not in error when they declare, that the negroes that were purchased during the widowhood, did not exclusively belong to their mother, as was claimed by the said Perkins, and allowed by the probate court.

Your orators further shew, that during the widowhood their mother purchased in part, and inherited in part, from the estate of Francis Bynum, on which estate your orators' mother administered, the two following negroes, namely, African John and James, for which purchase she became responsible to one of the heirs for a debt of between 800 and 900 dollars, which debt is justly chargeable to her estate, and not to the estate of Benjamin Bynum, as said Perkins has heretofore pretended.

Your orators shew, that the estate of their mother should have consisted of eleven negroes, and not twenty-one, as was reported by said

Perkins in his inventory of 1827, and upon which inventory he has based all his succeeding settlements.

Your orators submit to your honor, whether this error, knowingly and wilfully made by said Perkins, be not a sufficient ground to entitle your petitioners to the relief they pray for, against the illegal, fraudulent, and oppressive acts of the said Perkins, if no other acts of wrong and mal-administration did exist.

Your orators shew, that all the foregoing claims, besides others wholly unknown to them, as they verily believe, but well known to the said Perkins, they are justly entitled to, in virtue of their rights, as aforesaid, and which they had well hoped the said Perkins would have made full disclosure and full settlement of, with your orators, without recourse to law, as he was reasonably bound, and has been often requested to do. But now, so it is, the said Perkins fraudulently contriving, by various false pretences, crafts and stratagems, to injure and oppress your orators, and to conceal and withhold from them their just rights, sometimes pretends, that he has fully set forth and distributed all their respective shares derived by them, or appertaining to them, from the estate of their said father, Benjamin Bynum, and their said mother, Mrs. Mary Perkins; and at other times pretending, that your orators never derived any right or property whatever, from either or both of said estates. But, more expressly does the said Perkins pretend, that the receipts, release, or acquittance, which, by fraud, concealment, and circumvention, he obtained from your orators, has settled and satisfied said claims, and foreclose your orators from all further redress.

But, in reference to this receipt, release, or acquittance, your orators represent, that it was executed in the State of Mississippi; and they now solemnly declare, that the matters and things in this bill set forth, were not by the said Perkins, to your orators, discovered at the execution of said receipt, or at any time previous, by which your orators could have been advised of their rights, had their suspicions led them to an examination, which they did not. Hence your orators aver, that the said receipt is void, (except so far as it relates to the said Perkins' acts as guardian, in the probate court of Claiborne county, Mississippi,) by reason of the fraudulent concealment, on the part of said Perkins, of the extensive rights and interests which he claims to conclude by said receipt, which were not known by your orators when said receipt was executed.

The receipt is no bar, as your orators insist, when offered to conclude them, because it is not to be inferred, from the tenor of said receipt, that the matters and things set forth in this bill were intended to be concluded thereby; or, if the language of said receipt be considered as extending to the acts of administration and mal-administration of the said Perkins, in the State of Louisiana, then, because said receipt is false and fraudulent, *in fact*, as no part of said administration or mal-administration was considered by your orators when they executed said receipt. The said receipt, your orators aver, is void, and no bar, because your orator Harriet was a minor, and under twenty years of age, when she executed said receipt, and because executed as a release, under seal, by

a feme covert, in the State of Mississippi, to divest and conclude her sole and separate estate, in the State of Louisiana, without an acknowledgment thereof before a proper officer, separate and apart from her husband.

And, in further explanation of said receipt, your orators aver, that though in said receipt it is acknowledged that the sum of one hundred dollars, $100, was paid to them by the said Perkins when said receipt was executed, that the truth is, no such sum, nor was any sum of money whatsoever, so then and there received by your orators. But on the contrary, the said Perkins *the said Perkins* then and there presented to your orator, Fourniquet, the account E and F, exhibiting his said wife Harriet $550\frac{81}{100}$ in his debt, which was thereupon paid by your orator Fourniquet's check upon the Planters' Bank of Natchez for a like sum, as has been before referred to.

Your orators admit, also, that in the year 1840 they instituted various proceedings in the probate court of the parish of Concordia, to compel the said Perkins to render a just and full account of his unauthorized administration of the estate of Benjamin Bynum and Mrs. Mary Perkins, and that in making defence thereto, the said Perkins plead said receipt in bar of the demands of your orators; and also, under an order of the court, did present a new or amended account, which your orators aver was not essentially different from that reported by him in 1827, and equally illegal, unjust, and insufficient. They admit also that, by consent, the sufficiency of said receipt as a bar, and the sufficiency of said account as a satisfaction of your orators' demands, was referred to the district court of the parish of Concordia for adjudication, and there submitted to the consideration of a jury, who returned their final verdict for the defendant, Perkins.

But your orators protest, that the whole subject-matters of said controversy was under the jurisprudence of said estate exclusively cognizable in the said court, or else , or equally cognizable in your honorable court, but was wholly without the jurisprudence of said district court, the jurisdiction of which was not lawfully extended, or validated by consent of parties; and, if any apology were necessary, why your orators should now seek an adjudication of their cause in this honorable court, after such decision aforesaid by a tribunal having no jurisdiction thereof, they would find it in the conscientious conviction of their own minds, that the jury, in the verdict rendered, did not investigate the matters of fact, as touching the accounts, but decided only a matter of law, and that wrongfully, as your orators are advised and believe; said jury first reported as their verdict, that they found the receipt good and valid against your orators, by the laws of Mississippi, where the same was given; whereupon the court instructed the jury, their verdict was informal, and that they must return a general verdict, when the jury again returned into court with a general verdict for the defendant.

Your orators in this matter mean not the slightest imputation upon the integrity of the jury, but believe from the special verdict so first reported by them aforesaid, that they meant only to decide that, in their

opinion, said receipt was a legal and valid bar to your orators' claim; in which opinion your orators consider they were legally mistaken.

Your orators do not advert to the circumstances under which said verdict was rendered as a reason why this court should now hear their complaint, but have deemed it due to candour to report the facts in this behalf, and to excuse themselves, if excuse were necessary, for rejecting said decision, as they now do, for want of competent jurisdiction in the court which made it.

Whereupon your orators, thus affirming their claims aforesaid, protest against these pretences of said Perkins; all which acts and doings tend to the manifest injury and oppression of your orators; and for as much as they are without adequate relief at law, and can only be fully relieved in a court of equity, where such matters and things are particularly cognizable, therefore, may it please your honor to award the writ of subpœna, directed to the said John Perkins, commanding him to be and appear before your honorable court, to abide its further orders in the premises, and that the said Perkins may, upon his corporeal oath, full, true, and perfect answer make, to all the matters and things herein alleged against him, as fully as if herein again set forth, and he specially interrogated thereto; and that he may distinctly set forth and answer the following questions:

1st. Did you or not, on or about the 12th of August, 1818, intermarry, in the parish of Concordia and State of Louisiana, with Mrs. Mary Bynum, widow of Benjamin Bynum; were not you and your said wife, both citizens of the said State of Louisiana, when said marriage was solemnized?

2d. Did or not your said wife die on or about 12th of August, 1824?

3. At the date of the marriage aforesaid, was or not your said wife residing on the plantation of her deceased husband, Benjamin Bynum; which plantation was situated on Lake Concordia, in said parish and State?

4. At the date of your marriage, had or not your wife the following five children, namely, Nancy, aged about 12 years, Benjamin, 10 years, Mary 8, Harriet 4, Francis about 2 years old; when did the child Francis die; was or not Harriet about 4 years old when you married?

5. Did you or not, at the date of your marriage, have an inventory of the property made, belonging to the estate of Benjamin Bynum, as found upon the Lake Concordia plantation?

6. Did you or not have an inventory and appraisement made in 1820, when the said property was removed to the rear of your Somerset plantation?

7. Did you or not have an inventory and appraisement made of the estate of Benjamin Bynum, or of Mrs. Mary Perkins, at the date of her death, in August, 1824?

8. Were or not the inventories and appraisements of the estate of Mrs. Mary Perkins and Benjamin Bynum, dated the 2d day of March, 1827, the first legal shewing you caused to be made of your administration of said estates?

9th. Did you or not ever qualify yourself, by authority of the probate court of Concordia, to administer the estate of Benjamin Bynum, or Mrs. Mary Perkins, previous to the year 1827? If you answer this question in the affirmative, then present to this honorable court a copy of your application, appointment, and the bond given by you.

10th. Did you or not, when you removed the Bynum property to the rear of Somerset, in 1820, receive authority so to do from the probate court of Concordia? If you answer this question in the affirmative, then present to this honorable court a certified copy of the permission granted to you by said court.

11th. Did you or not, at the time of your marriage with Mrs. Bynum, have a family meeting called to sanction *his* second marriage? If you answer in the affirmative, then exhibit to this honorable court a certified copy of the proceedings had by said meeting.

12th. Did you or not, for a number of years, act as clerk, and afterwards as judge of the probate court of the Parish of Concordia; when did you resign as judge of said court?

13th. Did or not Mrs. Bynum, in February, 1816, apply to you in your official capacity for authority to cause an inventory and appraisement of *his* deceased husband's estate to be made; look at exhibit *A*, and say if you do, or do not, believe it to be a true copy of the inventory and appraisement of Benjamin Bynum's estate, and received by you in your official capacity as such?

14th Do you or not know or believe, that the 46 negroes, named in the inventory of 1816, were the negroes with their increase, that Benjamin Bynum brought with him from South Carolina, when he emigrated to the State of Louisiana; did the said Benjamin Bynum, from the time of his settlement in Lousiana, up to the time of his death, purchase any negroes? If you answer that he did purchase negroes, state their names and ages, and from whom purchased.

15. Did or not Mrs. Bynum, during the widowhood, that is, from 6th November, 1815, until 12th August, 1818, purchase the following 10 negroes, namely, Sarah, Omey, Ben, Caleb, Abraham, Judah, Rose Davison, Black Maria, Sam, and Yellow Maria.

16. Did or not Mrs. Bynum inherit the following 11 negroes, namely, from her brother Wm. Rives, Lucy, aged 40; Rose, 42; Selina, 20; Jack, 16; Jim, 11; Suzey, 8; Peter, 14. From the estate of her brother Henry Rives, Abb, 35, and her son George, 17. And from the estate of Francis Bynum, African James and John? Were not the negroes John and James burthened with a debt of between eight and nine hundred dollars, due to Sugay Turner, one of the heirs of *of* Francis Bynum?

17. Does or not the tax list of the parish of Concordia, dated March, 1818, show that the Bynum estate was taxed for 66 negroes, 15 horses and mules, 70 head of horned cattle, 1,000 arpents of land on Lake Concordia, valued at $4,000?

18. When you returned the Bynum property to the heirs, in 1827 and 1828, did you return to them, or either of them, more than the 60

head of cattle and the 6 mules, allotted to them in the inventory of the estate of B. Bynum and Mrs. Mary Perkins, dated 2 March, 1827? If to this question you answer that you delivered a greater number of cattle or mules than is in said inventories set down, state to whom you delivered them, and how many more there were of each.

19. Were or not the following sums of money due to the estate of Benjamin Bynum and Mrs. Mary Bynum, and collected by you after the marriage, *viz:* May 2d, 1820, from Henry Rives, $196; collected from Francis Bynum, May 3, 1819, $366; 3d May, 1819, F. & P. F. Bynum's note and interest, $63 90; April, 1823, collected from the estate of Henry Rives, jr., $216 66; January 3d, 1831, from David & Thomas Alexander, $1,115 $\frac{69}{100}$; money loaned Mr. Rives, $1,087 18$\frac{3}{4}$?

20. Did or not Mrs. Bynum, to your knowledge, receive, on or about the month of January, 1818, from her brother Charles Rives, for a like sum of money which she had loaned to the curator of the estate of her father, Henry Rives, sen., $1,400; from Charles Rives, on or about the same time, for money which Mrs. Bynum had loaned to her brother W. Rives, $1,281 60?

21. Were you or not, at the date of your marriage, cultivating a plantation of your own in the parish of Concordia, called Somerset? Of how many acres of land did your said plantation then consist?

22. Does or not the tax list of Concordia, dated March 1818, represent you as possessing 58 negroes, 60 head of horned cattle, 12 horses, and 1,077 acres of land, valued at $1,000?

23. Did you or not, in 1812, purchase from Francis Bynum, for the sum of $26,660, twenty-six thousand six hundred and sixty dollars, the 20 negroes as in this bill set forth? How many of the notes given for the said purchase did you pay from August 12th, 1818, until 1827?

24. Did you or not, before your marriage in 1818, apply to and receive from the Bank of the State of Mississippi the sums of money in this bill set forth? Did you not finally pay or discharge the said notes on or about the year 1822?

25. Did you or not, in 1818 and 1819, ship the crops of cotton raised on your Somerset plantation, and the crops raised on the Lake plantation, in your own name, and to the same merchants; and were they not sold and credited to your individual account indiscriminately?

26 Do you not claim to have raised on your Somerset plantation, from 1818 until 1824, the following crops of cotton: 1818, 210 bales; 1819, 205 bales; 1820, 231 bales; 1821, 321 bales; 1822, 246 bales; 1823, 88 bales; 1824, 268 bales? In answering this question, state how much your crops sold for in each and every of those years. State, also, how many bales of cotton you raised in 1825, 1826, and 1827, and how much your crops sold for in each and every of those years.

27. Please examine exhibit D, and say if you did not pay Doct. James Smith, of Baltimore, for the board, tuition, and clothing of your step-daughter Harriet, from the 1st July, 1825, until the 15th September, 1830, while she remained in Baltimore, the sum of $2,603 $\frac{60}{100}$, as in the account of the said James Smith is set forth.

28. Does or not the tax list of Concordia, before referred to, dated March, 1818, show you to be possessed of 1,077 acres of land, valued at $1,000.

29. Does or not the tax list of the same parish for the year 1826, show you to be possessed of 3,317 acres of land, taxed in one item, and valued at $20,000; also, 609 acres of land on Lake St. John, valued at $1,200? When and from whom did you acquire the lands on Lake St. John? Was or not the item of 3,317 acres intended to represent the lands purchased by you in the neighborhood of your Somerset plantation, (the Somerset plantation included,) from 1818 until 1826.

30. Did you or not purchase from Arthur Mahan the tract of land in the bill set forth and for the price set forth?

30. Did you or not erect on said land an expensive establishment called the Briars? How much did said establishment, with all the improvements thereunto attached, the grading of the ground, &c., cost you?

31. Did you or not purchase from Elihu Hall Bay, on the 5th January, 1819, the tract of land in Claiborne county, Mississippi, as in this bill, set forth?

32. Did you or not purchase from Sugay Turner, in March, 1824, the tract of land in Claiborne county, Mississippi, as in this bill set forth.

33. Did you or not retain out of the Bynum estate, or the estate of Mrs. Mary Perkins, the following negroes, namely, Cook, Lucy, Arthur, Abby, George, and Suzy.

34. Had you or not, employed about your establishment at Natchez the following negroes, namely, Mony, Nathan, Sarah, Nace, Arthur, Lucy, and Wheeler? Did not Lucy and Wheeler die while at Natchez? Did not these two negroes belong to the estate of Benjamin Bynum?

35. Did or not the following negroes die at Somerset, as in this bill set forth, namely, Chloe, aged about 35; Tuiqu, 27; Jacob, 29; Jenny, child of Mony, 4; Miles, 5; Peter, the child of Juno, 6; Solomon, the child of Milly, 1; Jim, the child of Milly, 3; Abby, the child of Cook and Lucy, 3; Nace 30; Sally, 28; Jim, killed by the falling of a tree, 28 years of age.

36. Did you or not hire the Bynum plantation to several tenants, after the removal of the negroes, &c., to Somerset; for how many years did you hire it; was or was not the gin-house burnt down when the plantation was in the occupancy of one of your tenants; what year was the gin-house burnt down?

37. Did you or not purchase an establishment in Lexington, Kentucky, for a summer residence; when did you purchase it; when did you sell it; what did you give for it; what did you sell it for?

38. When the Bynum force, &c., was removed from Lake Concordia, did they or not settle upon a piece of land in the rear of your Somerset plantation, about 3 miles from the Mississippi river; did they not erect thereon a negro quarter, and clear some land; how long did they continue to occupy said land before you removed them to your Somerset plantation, and worked them with your own negroes; were not the

Bynum negroes, when they first settled in the rear of Somerset, under an overseer who had accompanied them from Lake Concordia; had you not, at that time, an overseer of your own; were not the two places entirely distinct and separate; was or not the purchase from Gamaliel Pease and wife, the tract of land on which the Bynum negroes settled?

39. Have you or not retained, and do you not claim as your individual property, all the lands purchased by you during the coverture, including the tract of land which the Bynum force first settled?

40. Have you or not retained, and do you not claim, as your individual property, or have you not sold and appropriated to your own use, the funds derived from the sale of the real estate purchased by you in Claiborne county, and in Adams county, Mississippi, and in Lexington, Kentucky?

41. After the removal of the property of your step-daughter, Harriet, from Louisiana to Claiborne county, Mississippi, as in this bill set forth, did you or not act as guardian of the said Harriet, in said county and State; is not Exhibit E a copy of your account, as guardian, rendered to the probate court of Claiborne county, as aforesaid, exhibiting your step-daughter $399 $\frac{16}{100}$ dollars in your debt; is or is not Exhibit F a continuation of your said account; was not the five hundred and fifty dollars and eighty-one cents due to you, as represented by said account, paid by Fourniquet's check on the Planters' Bank, Natchez, in your favor, for a like sum; did you or not receive from said Planters' Bank the amount of said check in cash?

Your orators further represent, that Mrs. Mary B. Eskridge, formerly Bynum, and Martin W. Ewing, and Nancy S. Ewing, formerly Bynum, his wife, are joint heirs with your orators in the estate of Benjamin Bynum.

And that Mrs. Mary B. Eskridge, M. W. Ewing and wife, and John and Wm. Perkins, are joint heirs in the estate of Mrs. Mary Perkins, which parties your orators are not permitted to join with them in this bill, all of whom being excluded from participating in this suit, entitles your orators to recover $\frac{1}{3}$ of whatever amount the said Perkins may be condemned to pay and allow, for his illegal and unauthorized administration of the estate of Benjamin Bynum; and $\frac{1}{5}$ of the amount that may be awarded against him in favor of the representatives of the estate of Mrs. Mary Perkins, or for such other share as the case stated, and the laws of the State of Louisiana, entitles your orators to receive, from either or both of the said estates.

And, upon final hearing, may it please your honor to order and adjudge, that the said Perkins' account to and with your orators for their proportionable share of all the demands that have been set forth in this bill, with such other matters as may be discovered by the answer of the said Perkins.

Together with lawful interest thereon, to which, upon the facts aforesaid, they are entitled.

And that your honor grant to your orators all such other and further

relief in the premises, as the case presented entitles them to, and which to equity and good conscience shall seem meet.

And, as in duty bound, your orators will ever pray, &c.

Signed, E. P. FOURNIQUET,
HARRIET J. FOURNIQUET.
JOHN HENDERSON, *Solicitor*.

Exhibit A.—Benjamin Bynum's Estate.

To the honorable parish judge of the parish of Concordia, State of Louisiana.

The petition of Mary Bynum, widow of Benjamin Bynum, late of the parish of Concordia, and State aforesaid, deceased, humbly represents: That the said Benjamin Bynum died possessed of certain goods, chattels, lands, and tenements, within the said parish; your petitioner, therefore, humbly prays, that she may be appointed curator to the estate of said deceased; and your petitioner, as in duty , will ever pray, &c.

Signed, MARY BYNUM.

Concordia, 18*th February*, 1816.

Let the prayer of the foregoing petition be granted, on the requisition of the law being complied with.

Signed, JOHN PERKINS, *J. P. C.*

February 18*th*, 1816.

A just and faithful inventory of all and singular the goods and chattels, lands and tenements, rights and credits, which belonged to Benjamin Bynum, within the parish of Concordia, State of Louisiana, late deceased, to wit:

One bed	$18 00
One matrass	8 00
One bolster	3 00
Two sheets	4 00
One quilt	6 00
Two blankets	6 00
One mosquito bar	8 00
One do	10 00
Three do	20 00
One bed, bolster, and pillows	25 00
One matrass	10 00
Fifteen sheets, belonging to bedding	38 00
Six blankets	27 00
One looking-glass	1 00
One barrel or keg of tar	5 00
One chest	1 50
Four tables	8 00

Ten chairs	$5 00
Two dozen plates	2 00
One and one-half dozen cups and saucers	1 37½
Two teapots	75
Four bowls	50
Two pepperboxes	50
Two salt-stands, two milk-pots, sixteen tumblers, three dishes, $2 12½; two teapots, 1 coffeepot, 2 sugar dishes, 2 candlesticks, and 13 old books, 7 62½	9 75
18 pots, ovens, &c.	18 00
22 farming hoes	10 87½
6 spinning-wheels	18 00
2 bridles	2 50
2 pairs smoothing-irons	6 00
1 dozen knives and forks	2 00
Carpenters' tools, axes, harness, &c.	75 00
Wagon, &c.	100 00
4,000 lbs. bacon	400 00
Hog's lard, &c.	21 00
150 bushels of corn	75 00
75 bushels peas	37 00
3 stone jugs	3 00
8 mules	400 00
3 horses	180 00
Stock of cattle in the woods, supposed to be 65 head	325 00
Do. hogs in ditto, 50 head	30 00
Poultry yard	25 00
5 bales damaged cotton	250 00
1 negro man, named Will, about 35 years of age	800 00
1 do. woman, " Lucy, " 36 "	400 00
1 do. man, " Parker, " 20 "	600 00
1 do. boy, " Claiborne, " 11 "	350 00
1 do. boy, " James, " 7 "	200 00
1 do. girl, " Sucky, " 17 "	400 00
1 do. girl, " Judy, " 14 "	350 00
1 do. girl, " Jane, " 9 "	200 00
1 do. girl, " Eldenes, " 3 "	150 00
1 do. man, " Daniel, " 38 "	300 00
1 do. woman, " Cloe, " 35 "	400 00
1 do. boy, " Daniel, " 5 "	250 00
1 do. boy child, " Miles, " 1 "	90 00
1 do. girl, " Jude, " 14 "	350 00
1 do. wench, " Donis, " 21 "	400 00
1 do. girl, " Rose, " 5 "	150 00
1 do. child, " Eliza, " 1 "	80 00

Inventory—Continued.

1	negro man,	named	Simon,	about	40	years of age	$600 00
1	do. woman,	"	Jane,	"	22	"	400 00
1	do. boy,	"	Jack,	"	4	"	200 00
1	do. girl,	"	Hannah,	"	10	"	200 00
1	do. girl,	"	Sally,	"	8	"	175 00
1	do. girl,	"	Rachel,	"	2	"	80 00
1	do. man,	"	Maimbo,	"	37	"	500 00
1	do. woman,	"	Sally,	"	27	"	400 00
1	do. boy,	"	Abraham,	"	6	"	200 00
1	do. girl,	"	Polly,	"	4	"	150 00
1	do. girl,	"	Chany,	"	2	"	80 00
1	do. man,	"	Frank,	"	37	"	500 00
1	do. woman,	"	Mony,	"	27	"	400 00
1	do. boy,	"	Alexander,	"	3	"	150 00
1	do. child,	"	Anderson,	"	1	"	80 00
1	do. woman,	"	Milly,	"	25	"	400 00
1	do. boy,	"	Edward,	"	5	"	200 00
1	do. child,	"	Samuel,	"	6	months	50 00
1	do. woman,	"	Sarah,	"	65	years	100 00
1	do. man,	"	Peter,	"	21	"	600 00
1	do. girl,	"	Nelly,	"	18	"	400 00
1	do. man,	"	Nace,	"	40	"	550 00
1	do. woman,	"	Sarah,	"	35	"	450 00
1	do. man,	"	Cook,	"	40	"	550 00
1	do. man,	"	Jacob,	"	27	"	600 00
1	do. man,	"	Wheeler,	"	25	"	600 00
1	do. man,	"	Lewis,	"	22	"	600 00
1	do. man,	"	William,	"	21	"	600 00
1	do. man,	"	Zingo	"	27	"	300 00
One thousand arpents of land, with all and singular its appurtenances, situated on Lake Concordia - - -							4000 00
Cash, one thousand dollars - - - -							1000 00

Small claim, on open account, against Daniel Clifton, for		$50 00
Do.	against Francis A. Bynum, note - -	300 00
Do.	against Robert Moore, open account - -	10 00

State of Louisiana, parish of Concordia:

I, John Perkins, judge, in and for the parish aforesaid, certify, that the foregoing contains a true and correct inventory of all and singular the goods and chattels, lands and tenements, rights and credits, which belonged to the late Benjamin Bynum, of the parish aforesaid, at his decease, which hath been shown to me, or otherwise come to my know-

ledge; and that the same was taken in due form, under the provisions of the law in such cases made and provided.

Given under my hand, this eighth day of February, A. D. 1816.

Signed, JOHN PERKINS, *J. P. C.*

State of Louisiana, parish of Concordia:

We, the undersigned, duly appointed and sworn appraisers, to appraise and value all and singular the goods and chattels, lands and tenements, which belonged to the late Benjamin Bynum, of said parish, at his decease, do certify, that the foregoing sums annexed to the items contained in the foregoing inventory, is a true and correct appraisement and valuation of the same, to the best of our knowledge and judgment, and that the inventory contains all the property of said deceased, which hath been shown to us, or otherwise come to our knowledge.

Given under our hands, this 8th day of February, 1816.

Signed, SAMUEL THORNBERRY, &
CHARLES REVES,
Appraisers.

Exhibit B.

DR. John Perkins, curator *ad bona* and tutor to minor heirs, respectively, of the succession of Mrs. Mary Perkins, deceased, in account with said succession.

This accountant charges himself as follows, to wit:

Amount of inventory taken, 2d March, 1827, - -		$6,325 00
One half the acquits and gains, in community with the late Mr. Bynum, deceased, which sum is placed to the credit of the accountant, in the settlement of that estate; items next below, to wit:		
1,044 acres of land, on Lake Concordia, Louisiana,	$10,000,	$5,000 00
16 negroes, - - - - -	4,200,	2,100 00
4 mules, - - - - -	200,	100 00
60 head of cattle, - - - -	200,	100 00
Francis Bynum's note, and interest, - -	366,	183 00
		$7,483 00
Amount of inventory contained in supplement, negro boy Arthur, - - - - - -		250 00
		$14,058 00

This accountant prays allowance, as follows, to wit:

For this sum, being the appraised value of negro boy, called Peter, having died since the inventory was taken, -	$300 00
This sum paid office fees for inventorying and finally allowing and settling this account, - - -	55 00

Exhibit B.—Continued.

This sum, being the price of the negro boy Arthur, given John, - - - - - - - - -	$250 00
This amount of property on hand, subject to adjudication, under the provisions of the law in such cases made and provided, - - - - - - -	13,453 00
	$14,058 00

Your accountant exhibits a further account, showing the necessary expenditure for the use of the estate, and maintaining the family, schooling of children, &c., together with the receipts arising out of the said estate.

He charges himself as follows, to wit:

For this sum, being the amount of the crop of 1818, 85 bales of cotton, weighing 35,202 lbs., sold in New Orleans by McNeill, Fisk & Rutherford, 10th May, 1819, at 18 and 20 cents, as will be seen by the account of sales herewith presented; gross amount, $7,016 $\frac{42}{100}$; charges, $344 $\frac{34}{100}$; nett proceeds, - - - - -	$6,672 08
For amount of crop, 1819, 68 bales, weighing 15,666 lbs., sold by McNeill, Fisk & Co. *a.* 16 and 17 cents, on the 1st and 2d April, 1820; gross amount, $4,531 $\frac{12}{100}$; charges, $251 11, - - - - - -	4,100 01
These years average 30,434 lbs., a criterion for the following years, after the hands were removed and worked with others, to wit:	
For the year 1820; the average quantity, 30,434 lbs., sold in New Orleans at 16 60½; gross amount, 5,052 04; charges, $300; nett proceeds, - - - - - -	4,752 04
For the year 1821; the average quantity, 30,434 lbs., sold in New Orleans at 16 60½; gross amount, $5,052 04; charges, $300; nett proceeds, - - - - -	4,752 04
For the year 1822; the average quantity, 30,434 lbs., sold in New Orleans at 12 cents; gross amount, $3,652 08; charges, $300; nett proceeds, - - - - -	3,352 08
For the year 1823, overflow; for the labor of hands this fall, making levee, - - - - - - -	1,000 00
For the year 1824; the average quantity, 30,434 lbs.; from this deduct one-fourth destroyed by an overflow, leaves 22,826 lbs., sold in New Orleans at 15¼ cents; gross amount, $3,480 96½; charges, $300; nett proceeds, -	3,180 96½
For the year 1825; the usual quantity, 3,434 lbs., sold in	

Exhibit B.—Continued.

New Orleans *a.* 12 $\frac{5}{100}$ cts.; gross amount, $3,667 29; charges, $300; nett proceeds, - - - -	$3,367 29
For the year 1826; deduct from the usual quantity one-fourth destroyed by overflow, leaves 2,286 lbs., sold in New Orleans at 10$\frac{3}{4}$ cts.; gross amount, $2,463 79; charges, $300; nett proceeds, - - - -	2,163 79
For this sum, from Holleday and others, for suit of plantation on Lake Concordia, - - - -	2,620 00
For this amount, for a piece of land sold by the deceased, and money loaned to Mr. Reeves, - - -	1,087 18$\frac{3}{4}$
For this sum, from Col. James Bynum, - - -	63 90
For this sum, to balance account, - - -	7,388 61$\frac{3}{4}$

He claims allowance, as follows, to wit:

For this sum, being the expenditures for the use of the hands, in making the crop of 1819, including overseer's wages, bagging and cordage, taxes, &c., - -	$2,000 00
For this, for general expenditures for use of family, schooling, &c., for same year, and part of 1818, - -	4,000 00
For this amount, for general expenditures for use of hands, for 1820, - - - - - -	1,500 00
For this amount, for general expenditures for use of family same year, including schooling, &c., - - -	2,500 00
For this amount, for general expenditures for use of hands, 1821, - - - - - - -	1,500 00
For this amount, for general expenditures for use of family same year, including schooling, &c., - -	2,500 00
For this amount, for general expenditures for use of hands, 1822, - - - - - - - -	1,500 00
For this amount, for general expenditures for use of family same year, including schooling, &c., - - -	5,000 00
For this am't, for general expenditures for use of hands, 1823, - - - - - - - -	1,500 00
For this amount, for general expenditures for use of family same year, including schooling, &c., - - -	4,000 00
For this amount, for general expenditures for use of hands, 1824, - - - - - - -	1,500 00
For this amount, for general expenditures for use of family same year, including schooling, &c., - - -	5,000 00
For this amount, for general expenditures for use of hands, 1825, - - - - - - - -	1,500 00
For this amount, general expenditures for use of family same year, including schooling, &c., - - -	4,000 00

Exhibit B—Continued.

For amount of general expenditures for use of hands, 1826,	$1,500 00
For this amount, for general expenditures for use of family same year, including schooling, &c., - - -	5,000 00
	$44,500 00
	$7,388 61¾

The State of Louisiana, parish of Concordia, ss:

Before me, the undersigned, parish judge and ex officio judge of probate in and for the said parish, personally appeared John Perkins, the within named accountant, and being duly sworn, deposes and says, that the within account, setting forth a full and final administration by him of the estate of Mrs. Mary Perkins, deceased, within the said parish, for account of the heirs of the said deceased, he verily believes to be just and true; and that, in regard to the charges therein made for expenditures, he hath not preserved any detailed accounts showing the particular sums expended; but he doth well know that they are in the said account set down and stated at less than what he hath actually paid and advanced in the said expenditures.

JOHN PERKINS.

Sworn to and subscribed, this 29th day of May, 1827, before me—
ROBERT OGDEN,
Parish judge and ex-officio judge of probates.

The State of Louisiana, parish of Concordia, ss:

At a special court of probates, in and for the said parish, this 29th of May, 1827—present, Robert Ogden, judge; George S. Guion, clerk; in the matter of the succession of Mrs. Mary Perkins, dec'd.

JOHN PERKINS, curator and tutor, &c.,
vs.
THE SAID SUCCESSION.

On submission of the final administration account appeared the said plaintiff, as curator *ad bona*, and tutor respectively to the minor heirs of the said succession, and Martin W. Ewing, representing his wife, Mrs. Ann Ewing, and as curator *ad lites*, and under tutor respectively to the said minors, and upon an examination of the said account, and the testimony adduced, it is ordered, adjudged, and decreed, that the said account be allowed and confirmed, subject to whatever opposition may be made and sustained upon the part of the said heirs, as by law prescribed. The time within which said opposition may be received, being, by consent of parties aforesaid, hereby extended to the 10th day

of August next. After which, no opposition being made, this judgment to be absolute.

ROBERT OGDEN,
Judge of Probates.

Attest: GEORGE S. GUION, *Cl'k.*

State of Louisiana, parish of Concordia, ss:

I, Robert Ogden, judge of probates in and for the parish aforesaid, do hereby certify, that the foregoing is a true copy of the original administration account, now remaining on file in my office.

Given under my hand, and the seal of my office, this 6th day [L. s.] of February, A. D. 1828.

ROBERT OGDEN,
Judge and Notary Public.

Exhibit C.

John Perkins, curator ad bona, and tutor to the minor heirs respectively of the succession of Mr. Benj'n Bynum, deceased, in account with said succession.

DR.

This accountant charges himself as follows, to wit:

For negroes originally brought into the stock by deceased, at his marriage with Mrs. Bynum, with their increase, to wit, 44 in number, valued 2d March, 1827, at - - -	–	$11,450
For amount of the appraised value of acquits and gains of community of Mrs. Bynum, to wit, 1,040 acres of land on Lake Concordia, valued at - - - - -	$10,000	
16 negroes, to wit:		
Frank, 50 years of age - - $200		
Mariah, 40 do. his wife - 300		
Alexander, 14 do. their son - 350		
Anderson, 9 do. - - 250		
Fanny, 7 do. - - 200		
Lucy, 5 do. - - 200		
Parker, 3 do. - - 150		
Frank, 1 do. - - 100		
Children of Sally, deceased, to wit:		
Abram, 16 years of age - - 200		
Polly, 14 do. - - 300		
Chany, 12 do. - - 250		
Tom, 5 do. - - 200		
Milly, 37 do. - - 350		

Exhibit C—Continued.

Ned, 16 years of age - - $400		
	$13,450	
Billie, 33 do. - - -	300	
Lewis, 33 do. - - -	450	
4 mules - - - - -	200	
60 head of cattle - - - -	200	
Francis A. Bynum's note, with interest -	366	
This sum, being the proceeds of a negro girl, called Hannah, sold in the spring of 1825 -	470	
For amount of chest of carpenter's tools, included in the inventory, and omitted in this account - - - - - -	5	
		15,541
		$26,891

CR.

This accountant claims allowance as follows, to wit:

For one-half the amount of the appraised value of the acquits and gains of the community of Mrs. Bynum, carried to his debit in the settlement of Mrs. Perkins' estate, to wit, 1,040 acres of land on Lake Concordia, Louisiana, valued at - - - - $10,000	5,000	
16 negroes, valued at - - - 4,200	2,100	
4 mules, valued at - - - 200	100	
60 head of cattle, valued at - - 200	100	
Francis A. Bynum's note - - 366	153	
		$7,483
This sum being the price Ellen, a negro girl, given by the deceased to Ann, now Mrs. Ewing - - -		350
This sum being the price of James, a negro boy, given to Benjamin - - - - - -		450
This sum being the price of George, a negro boy, son of Will, given to Mary - - - - -		250
This sum being the price of Will, a negro boy, son of Will, given to Harriet - - - - - -		200
This sum paid office fees for inventorying and finally allowing and settling this account - - - -		55
This amount of property on hand, subject to adjudication under the provisions of the law in such cases made and provided - - - - - - -		18,103
		$26,891

State of Louisiana, parish of Concordia, ss:

Before me, the undersigned, judge of probates, personally appeared John Perkins, the within named accountant, and being duly sworn, deposes and says, that the within account, setting forth a full and final administration by him of the estate of Benjamin Bynum, deceased, for account of the heirs of the said deceased, is just and true.

JOHN PERKINS.

Sworn and subscribed this twenty-ninth day of May, 1827, before me,

ROBERT OGDEN,
Judge of probates.

State of Louisiana, parish of Concordia, ss:

At a special court of probates, in and for the said parish, this 29th day of May, A. D. 1827—

Present, Robert Ogden, judge; George S. Guion, clerk.

In the matter of the succession of Benjamin Bynum, deceased.

JOHN PERKINS, curator and tutor, &c.,
vs.
The said succession.

On submission of final administration account, appeared the said plaintiff as curator *ad bona* and tutor respectively to the minor heirs of the said succession, and Martin W. Ewing, representing his wife, Mrs. Anna Ewing, and as curator *ad lites* and under tutor respectively to the said minors; and, upon an examination of the said account and the testimony adduced, it is ordered, adjudged, and decreed, that the said account be allowed and confirmed, subject to whatever opposition may be made and sustained on the part of the said heirs, as by law prescribed. The time within which such opposition may be received being, by consent of the parties aforesaid, hereby extended to the 10th day of August next. After which, no opposition being made, this judgment to be absolute.

ROBERT OGDEN,
Judge of probates.

Attest: GEORGE S. GUION, *Clerk.*

State of Louisiana, parish of Concordia, ss:

I, Robert Ogden, judge of probates in and for the parish aforesaid, do hereby certify, that the foregoing is a correct copy of the original administration account on file in my office.

In testimony whereof, I have hereto set my hand, and the seal of my office, this 7th day of February, A. D. 1828.

[SEAL.] ROBERT OGDEN,
Judge and notary public.

Exhibit D.

BALTIMORE, 1*st January*, 1830.

John Perkins, esq.,
To James Smith, Dr.

1825.—To board, clothing, and schooling your daughter, Harriet Bynum, from 1 July to 30 December, ½ year - - - - - -	$250 00
1826.—To do do do from 1 Jan'y to 31 December, one year - - -	500 00
1827.—To do do do from 1 Jan'y to 31 December, one year - - -	500 00
1828.—To do do do from 1 Jan'y to 31 December, one year - - -	500 00
1829.—To do do do from 1 Jan'y to 31 December, one year - - -	500 00
	$2,250 00

Payment received in full. JAMES SMITH.

Carried over.

John Perkins
To James Smith, Dr.

1830.—To board and schooling Harriet Bynum, from 1st July, 1825, to 31st December, 1829, 4½ years, as per statement within - - -	$2,250 00
1830, Sept. 15.—To do do do from 1 Jan'y to this date, being 8½ months - -	353 60
	$2,603 60
Cr.	
By payment on acc't - - - 2,250 00	
By balance of acc't - - - 9 22	
By check dated 9 April - - - 250 00	
	$2,509 22
	$94 38

1831, Jan. 31. Received of John Perkins, esq., ninety-four dollars and thirty-eight cents, in full of the above ac.
Signed, JAMES SMITH.

A true copy from the original.
Signed, DUNCAN N. HENNEN, [SEAL] *Clerk*.

Exhibit E.

Dr. Miss Harriet J. Bynum in account current with John Perkins, her guardian. Cr.

April, 1832. To this sum, being the amount of Judge Eckridge's account against minors, for sundries, as per voucher No. 1 - - -	$1,118 33	1833. By amount of minor's interest in Long Branch plantation and hire of negroes to Judge Eckridge, for the year 1832, being one-half of said plantation and negroes thereon at work - - - -	$1,200
April, 1833. To this sum, being [the] amount of current expenses for the year past of said minor, as per voucher No. 2 - - - - -	502 99	By this sum received of S. Davis, esq., for rent of land once owned by minors in the parish of Concordia, La. -	29 16
To this sum, being the amount of the office fees in the orphans' court of Claiborne county, as per voucher No. 3 - - - - -	7 00	This sum in favor of guardian, on this account - - - - -	399 16
	$1,628 32		$1,628 32

Examined and allowed.

(Signed) P. A. VANDORN, *J. P.*

5 Ark. 33

The State of Mississippi, Claiborne county:

I, Lucas Gee, clerk of the probate court in and for said county, do hereby certify the within and foregoing to be a true transcript from the records in my office.

Given under my hand and seal of said court, this 17th day of May, in the year of our Lord 1834.

[SEAL.] Signed, LUCAS GEE, *Clerk*.

Exhibit F.

1833. Miss Bynum to J. Perkins, her guardian, Dr.

	To this sum, on balance of account, allowed and approved at the April term of 1833, in Claiborne county - - - - - -	$399 16
April 14	To cash at the Briars - - - - -	50 00
17	ditto ditto - - - -	100 00
	Fees for recording deed Jno. Perkins to E. P. Fourniquet - - - - -	1 65
		$550 81

Received the above sum of five hundred and fifty dollars and eighty-cents, in full, May 27, 1834.

Signed, JOHN PERKINS.

Exhibit G.

Natchez, May 26, 1834.

Planters' Bank, pay to Jno. Perkins, on account H. J. B., or bearer, five hundred and fifty $\frac{81}{100}$ dollars.

$550 81. Signed, E. P. FOURNIQUET.

Exhibit H.

EDWARD P. FOURNIQUET and WIFE vs. JOHN PERKINS. } Release.

Received, Natchez, May 27, 1834, of John Perkins, in settlement of an account, debts due, and demands, whatsoever, to the present day, one hundred dollars in full; having, on a previous occasion, received from him, as guardian of my wife, Mrs. Harriet Fourniquet, late Miss Bynum, all the estate, portion, and share, she inherited by the death of her late father, Benjamin Bynum, late of Concordia, Louisiana, deceased, or her mother, Mrs. Mary Perkins, of the county of Adams and State of Mississippi, and brothers, Benjamin S. Bynum, of the county of Claiborne, State last aforesaid, deceased, and do, by these presents, jointly, with my said wife, release, and forever discharge, the said Perkins, either as guardian, or otherwise, growing out of the estate aforesaid, or in any other manner or shape, whatsoever, and forever exonerate him,

by these presents, his heirs, executors, and administrators, therefrom.

In witness whereof, we have hereunto set our hands and seals, the day and year first above written, to wit, in the year of our Lord one thousand eight hundred and thirty-four, in the presence of Elijah Bell and John E. Maddox, whose names are hereunto subscribed as witnesses thereto, the said John Perkins being also personally present, and by these presents accepting.

Signed, sealed, and delivered.

Signed, E. P. FOURNIQUET, [SEAL.]
HARRIET J. FOURNIQUET, [SEAL.]
JOHN PERKINS. [SEAL.]

Witness present:
ELIJAH BELL,
JOHN E. MADDUX.

State of Mississippi, Adams county:

Personally before me, Woodson Wren, a justice of the peace for the county of Adams, appeared E. P. Fourniquet and Harriet J. Fourniquet, his wife, and John Perkins, whose names are subscribed to the foregoing instrument, and acknowledged that they signed, sealed, and delivered the same, as their act and deed, on the day, and for the uses and purposes therein mentioned.

Given under my hand and seal, the 28th May, 1834.

Signed, WOODSON WREN. [SEAL.]

State of Mississippi, Adams county.

I, Fleming Wood, clerk of the probate court for the county aforesaid, do certify, that Woodson Wren, whose proper signature is subscribed to the above acknowledgment, is, and was at the time of his subscribing the same, a justice of the peace in and for said county, duly elected, commissioned, and qualified as such; and that all his acts, as a justice of the peace, are entitled to full faith and credit.

[SEAL.] Witness my hand and official seal, this 28th day of May, 1834.

Signed, F. WOOD, *Clerk*.

State of Louisiana, parish of Concordia:

I, George W. Keeton, judge of the said parish, duly commissioned and qualified, do hereby certify and attest, unto all whom it doth or may concern, that Harriet J. Bynum, wife of Edward P. Fourniquet, and Edward P. Fourniquet, and John Perkins, personally appeared before me, and acknowledged that they had signed and sealed the foregoing instrument of writing as and for their proper act and deed. To the due execution thereof, an act being requested, the same under my seal of office to serve as occasion may require.

Done and passed at my office, in the town of Vidalia, on the thir-
[SEAL.] teenth day of January, A. D. eighteen hundred and thirty-seven.

Signed, J. W. KEETON, *P. Judge*.

Exhibit I.

Inventory and appraisement of estate of Benjamin Bynum, deceased, dated March 2d, 1837, viz:

1,040 acres of land on Lake Concordia				- - -	$10,000
1 negro man, Frank,	aged	50	years	- - -	200
2 woman, Maria,	"	40	"	- - -	300
3 boy, Alexander,	"	14	"	Children of Frank and Maria.	350
4 boy, Anderson,	"	9	"		250
5 girl, Fanny,	"	7	"		200
6 girl, Lucy,	"	5	"		200
7 boy, Parker,	"	3	"		150
8 boy, Frank,	"	1	"		100
9 man, Will,	"	50	"	- - -	300
10 woman, Dinah,	"	33	"	wife of Will - -	400
11 girl, Rose,	"	13	"	Children of Will and Dinah.	300
12 boy, George,	"	7	"		250
13 boy, William,	"	5	"		200
14 boy, Robert,	"	3	"		150
15 girl, Celia,	"	1	"		100
16 man, Maimbo,	"	50	"	- - -	200
17 boy, Abraham,	"	16	"	- - -	200
18 girl, Polly,	"	14	"	- - -	300
19 girl, China,	"	12	"	- - -	250
20 boy, Tom,	"	5	"	- - -	200
21 woman, Judy Myers,	"	25	"	- - -	400
22 boy, Edward,	"	4	"	Children of Judy Myers.	150
23 boy, Harry,	"	7	mo.		50
24 man, Daniel,	"	50	years	- - -	250
25 boy, Little Daniel,	"	14	"	Children of Daniel	400
26 boy, Patrick,	"	13	"		350
27 boy, Lewis,	"	5	"		200
28 woman, Sarah,	"	47	"	wife of Daniel -	200
29 woman, Milly,	"	37	"	- - -	350
30 boy, Ned,	"	16	"	- - -	400
31 man, Billy,	"	33	"	- - -	300
32 woman, Suckey,	"	33	"	- - -	400
33 boy, David,	"	9	"	- -	300
34 boy, Moses,	"	7	"	- - -	250
35 girl, Lucy,	"	5	"	- - -	200
36 girl, Eleanor,	"	3	"	- - -	150
37 girl, Sarah,	"	1	"	- - -	100
38 woman, Judy Money	"	25	"	- - -	400
39 negro girl, Caroline,	"	5	"	Children of Judy Money.	200
40 negro girl, Jesse,	"	2	"		150
41 negro man, Simon,	"	50	"	- - -	200

Exhibit I—Continued.

42	negro woman, Jane,	aged 35 years	wife of Simon	-	$350
43	negro woman, Sally,	" 20 "	Child of Sally	-	450
44	negro girl, Jenny,	" 1 "			
		Amount forward	-	-	$20,800
		Amount brot. forward		-	$20,800
45	negro boy, Jack,	aged 16 years			400
46	negro girl, Rachel,	" 14 "	Children of Simon.		300
47	negro boy, Simon,	" 9 "			300
48	negro girl, Betsey,	" 5 "			200
49	negro boy, Jacob,	" 3 "			200
50	negro man, Peter,	" 33 "	- - -		450
51	negro woman, Old Sarah,	" 70 "	- - -		100
52	negro man, Lewis,	" 33 "	- - -		450
53	negro woman, Nelly,	" 30 "	wife of Lewis	-	400
54	negro boy, Charles,	" 9 "	- - -		300
55	negro girl, Fanny,	" 5 "	- - -		200
56	negro boy, Henry,	" 3 "	- - -		150
57	negro girl, Sarah,	" 1 "	- - -		100
58	negro man, Parker,	" 33 "	- - -		500
59	negro girl, Eleanor,	" 14 "	given by Mrs. Perkins to daughter Ann	- - -	350
60	negro boy, Jim,	" 16 "	given by Mrs. Perkins to son Benjamin	- - -	450
					$25,650
1	chest carpenters' tools, old		- - -		5
4	mules - - -		- - -		200
The stock of cattle, supposed 60 head			- - -		200
					$26,055

Signed,

JOSEPH SMITH,
JAMES NOULEN,
Appraisers.

Witness—
E. JAMES SMITH,
MOSES MULHOLLAN.

ROBERT OGDEN, *Judge, &c.*

Exhibit 1—Continued.

Inventory and appraisement of estate of Mrs. Mary Perkins, deceased, dated March 2d, 1827, viz:

1	negro	man,	named	Cook,	aged	55	years,	valued at -	$200
2	do	woman,	"	Lucy,	"	40	"	wife of Cook	250
3	do	woman,	"	Rose,	"	22	"	Children of Lucy and Cook.	400
4	do	do	"	Selma,	"	20	"		400
5	do	boy,	"	Jack,	"	16	"		350
6	do	girl,	"	Susey,	"	14	"		300
7	do	boy,	"	Jim,	"	12	"		300
8	do	do	"	Peter,	"	10	"		300
9	do	man,	"	Caleb,	"	24	"	- -	500
10	do	woman,	"	Abbey,	"	35	"	- -	350
									3,350
				Amt. brot. forward				-	$3,350
11	negro	man,	named	George,	aged	17	years	- -	400
12	do	woman,	"	Rose	"	24	"	- -	400
13	do	boy,	"	Ephraim,	"	4	"	Children of Rose.	200
14	do	girl,	"	Fanny,	"	2½	"		150
15	do	do	"	Caroline,	"	6	mo.		50
16	do	man,	"	Big Abraham	"	21		- -	200
17	do	woman,	"	Judy,	"	26		- -	300
18	do	do	"	Black Maria,	"	22		- -	400
19	do	do	"	Yellow Maria,	"	30		- -	400
20	do	man,	"	African John,	"	34		- -	25
21	do	do	"	Sam,	"	19		- -	400
									$6,275
2 mules - - - - - - - -									50
									$6,325

Signed, JOSEPH SMITH,
JAMES NOULEN,
Appraisers.

Witnesses present—
E. James Smith,
Moses Mulhollan.

Supplemental.

22	negro	boy,	Arthur,	absent in Mississippi	- -				250
									$6,575

Signed, JAMES NOULEN,
JOSEPH SMITH,
Appraisers.

Witnesses present—
ANSON STANSBROUGH,
MARTIN W. EWING.

ROBERT OGDEN, *Parish judge, &c.*

29 May, 1827.

Exhibit K.

Benjamin, Mary, and Harriet Bynum, for expenditures on their succession on Lake Concordia, in account with John Perkins, guardian, &c.

DR.

1828.			
Jan'y.	To cash	paid for driving stock	$5 00
	"	paid for five horses	200 00
	"	paid overseer	638 75
	"	paid W. C. Grissam & Co. for medicines	13 45
	"	paid J. P. Walworth, for sundries	389 97
	"	paid Doct. Gustine, for medical services	12 00
	"	paid taxes	86 08
	"	paid A. Fisk, for this amount for bagging and cordage, $69.61, interest $1.82	71 43
	"	paid for this amount paid James Forster for shoes, $52.72, interest 78	53 50
	"	7 new double and 14 single trees, *a* 4.50	31 50
	"	3 half-worn ploughs	10 00
	"	1 new pickit frow	4 50
	"	13 pair haines, *a* 1.25	16 25
	"	4 iron wedges	5 00
	"	5 yards of tow linen, *a* 17 c.	85
	"	10 yards of muslin, *a* 25 c.	2 50
	"	carryal or waggon	25 00
	"	11 harrow teeth, *a* 1.25	13 75
	"	8 barrels of meal, (pork barrels)	16 00
	"	12 new hoes, *a* 75	9 00
	"	12 bridle bitts, $3—1 pr. sug. bitts for carts, $3	6 00
	"	iron bolt for cart tongue	75
	"	6 hoes	3 00
	"	6 barrels of seed corn, (pork barrels)	10 00
	"	344 yards tow linen, *a* 17 c.	77 48
	"	180½ " woolsey, *a* 50 c.	90 25
	"	3 ox yokes and staples	10 00
	"	140 barrels corn, *a* 43¾	60 12½
	"	499 bushels from Major Minor on Lake C.	200 00

Exhibit K—Continued.

1828.	To cash paid for boat - - - - -	$10 00
Jan'y.	" do paid by Mr. Smith for 9 barrels of pork, July 21, 1828 - - -	95 00
	" B. S. B., bill for pork, &c. - 14 00	31 25
	" do for cash paid for hauling cotton 17 25	
		$2,198 38½
	To balance - - - - -	$64 20

CR.

By this sum collected by Benj. S. Bynum, of Messrs. Alexanders, for hire of negroes -	$379 97
" hire of negroes at the Briars - - -	200 00
" ditto of Billy, the weaver, at Somerset weaving	50 00
" this sum, being the nett proceeds of sales of 31 bales, being the crop of cotton raised by said succession - - - - - - -	1102 16
" this sum of a horse given B. S. B. -	40 00
" B. S. Bynum, for this sum, being the amount of Jos. Newman's note, uncollected, for moss picked and sold him - - - - -	44 50
The following articles sold to Benj. and Mary at the original cost, to wit:	
By a grindstone - - - - - - -	3 25
" 1 cut saw and drawing knife - - -	8 75
" 3 chisels and 2 spades - - - - -	4 00
" 3 French blankets - - - - -	9 50
" pot and oven, $5.65, 3 chairs and iron square	20 33
" 1 set knives and forks, $1.25, plates, &c., $2	3 25
" cups and saucers, milk crocks, &c. - -	3 00
" 1 auger and 1 doz. axes - - - -	22 25
" 3 wooden buckets, $2.62½, spoons, 62½ -	3 25
" 1 gimlet, steelyards, and 3 hoes - - -	5 12½
" 1 handsaw, $2, hatchet, $1, 5 irons, $1 -	4 00
" 1 foot adze, $1, auger and chisel, $1 - -	2 00
" 6 Morford ploughs, 3 old do. - - -	50 00
" hoes, $6.88, 10 pair trace chains - - -	14 37½
" ½ bushel measure - - - - -	75
" slate - - - - - - - - -	37½
" sorrel mare - - - - - - -	40 00
" double trees and single do. - - - -	31 50
" 1 picket frow - - - - - - -	4 50

By 6 prs. of haines - - - - - - -	$16 25
" iron wedges - - - - - - -	5 00
" 5 yds. tow linen, *a* 17, 85; 10 do. muslin -	3 10
" 11 harrow teeth, hoes - - - - -	13 75
" 12 bridle bitts, $3; sug. bitts for cart - -	5 00
" cart bolt, 75; ox yokes and staples, $10 -	10 75
" 1 ox cart - - - - - - - -	20 00
" 27 bushels corn on Lake Concordia - -	13 50
Balance - - - - - - -	64 20
	$2198 38½

United States of America:

The President of the United States, to the marshal for the eastern district of Louisiana, greeting:

You are hereby commanded to summon Jno. Perkins to appear before the honorable the judges of the fifth judicial circuit of the United States of America, at a circuit court to be holden on the first Monday in August, 1844, then and there to answer a bill in chancery filed against him, wherein Edward P. Fourniquet and Harriet Jane Fourniquet is defendant; herein fail not, and have you then and there this writ, with your endorsement thereon, how you have executed the same.

Witness the honorable R. B. Taney, chief justice of the Supreme Court of the United States of America, this twenty-fifth day [L. S.] of June, in the year of our Lord one thousand eight hundred and forty-four, and the sixty-eighth year of American independence.

Signed, D. N. HENNEN, *Clerk*.
J Q. A. HOIT, *Dep. clerk*.

Memo. The defendant is to enter his appearance in the clerk's office, on or before the first Monday of August, 1844, otherwise the bill may be taken *pro confesso*.

Marshal's return.

Received 25th June, 1844, and on the 17th day of July, 1844, served copy of the within subpœna in chancery on John Perkins, by leaving same at his domicile, in the parish of Tensas, in the hands of Mr. J. M. Teer, a free white person, over the age of 14 years, residing on his premises, 380 miles from New Orleans.

For A. SIDNEY ROBERTSON,
United States Marshal.
J. B. ROBERTSON,
Dy. U. S. Marshal.

And afterwards, to wit, on the 6th day of January, A. D. 1845, came the defendant, John Perkins, by his solicitors, Grimes & Ogden, esqs., and filed in the clerk's office of said court his plea and answer to complainants' bill, which plea and answer is in the words and figures following, to wit:

In the circuit court of the United States for the fifth circuit and eastern district of Louisiana.

E. P. FOURNIQUET and wife
vs.
JOHN PERKINS.

The plea and answer of the defendant, John Perkins, to the bill of complaint and discovery of the said complainants.

This respondent, saving and reserving all benefit, &c., &c., shews, that on or about the 15th day of December, 1838, the said complainants did institute a suit in the court of probates in and for the parish of Concordia, in the State of Louisiana, against this respondent, for the same cause of action as is set forth in the said complainants' bill. That the said suit was duly and regularly transferred for trial and judgment upon all matters in issue therein to the district court of the ninth judicial district of the State of Louisiana, held in and for the said parish of Concordia, when and where such proceedings and pleadings were had, and such issue joined, as embraced the whole matters set forth and complained of in and by the said complainants' bill in this behalf filed and exhibited; and that in the further due and lawful proceedings in said suit, and upon final hearing thereof, judgment was rendered in favor of this defendant, upon all the matters in issue therein; all which will appear by a transcript of the record of the proceedings in the said suit, duly authenticated, which is hereto annexed and exhibited, and made part hereof; which said judgment is final and conclusive between the said parties, as to all the matters of the said complainants' bill; and this respondent pleads and sets up the same as a full and complete bar to the said bill, and prays that he may have the benefit thereof as such. And this defendant, in support of his said plea, for answer to so much of the said complainants' , as he is advised it is necessary or material for him to answer unto, he answers and says: That he denies all the fraud and concealment, collusion and circumvention set forth and charged in the said complainants' bill, and he especially denies, that the said district court of the ninth circuit, of the State of Louisiana, was without jurisdiction to try and give judgment in the suit aforesaid, as it is charged in the said bill; on the contrary, he avers and alleges, that the said court had by law jurisdiction thereof, in manner and form as cognizance was by the said court taken thereof; that the said judgment was rendered after a fair and a full and complete investigation and hearing of all the evidence adduced by the said complainants, touching the matters in issue, and that this respondent is entitled to the full benefit thereof, as a bar to the said complainants' bill, and that there exists no just reason in law or equity why he should not have the full benefit thereof. Wherefore, he prays

that he may have the benefit thereof, and be hence dismissed, without further answer, with his costs; and for all such other and further relief in the premises as justice and equity may require.

JNO. R. GRYMES,
A. N. & R. N. OGDEN,
Solicitors for deft.

We certify, that the plea in bar pleaded as above is, in our opinion, well founded in point of law.

JNO. R. GRYMES,
R. N. & A. N. OGDEN,
Of counsel.

John Perkins, the defendant, being sworn, says, that the plea in bar, as above pleaded, is not interposed for delay, and that the matter set forth in said plea as a bar to plaintiffs' action is true.

JNO. PERKINS.

Sworn to before me, this 1 January, 1845,
DUNCAN N. HENNEN,
Master in Chancery and Commissioner.

John Perkins, the defendant, being sworn, says, that his answer in support of the plea in bar filed by him to complainants' bill is true, as well as the matter contained in said plea; and that the same has not been interposed for delay.

JNO. PERKINS.

Sworn to and subscribed before me, this 9th day January, 1845,
THEO. H. McCALEB,
U. S. Judge.

NINTH DISTRICT COURT,
Parish of Concordia, Louisiana.

EDWARD P. FOURNIQUET and Wife,
vs.
JOHN PERKINS. } No. 687.

To the honorable George W. Keeton, judge of the court of probates, in and for the parish of Concordia, State of Louisiana, the petition of Edward P. Fourniquet, and his wife Harriet J. Bynum, by her said husband, herein duly authorized and assisted, residing in Adams county, State of Mississippi, respectfully represents:

That in the year A. D. 1815, Benjamin Bynum died in the parish of Concordia, State of Louisiana, leaving at his decease a surviving wife, named Mary Bynum, and four minor children, who were his only heirs, being the issue of his marriage with the said Mary, to wit, Nancy S. Bynum, Mary C. Bynum, Benjamin S. Bynum, and your petitioner Harriet. That the deceased left, situate in the parish aforesaid, his place of residence, and where his succession was legally opened, and of which he was seized and possessed, being the owner of the same, a plantation, cultivated in cotton, situate on Lake Concordia, containing from one thousand to one

thousand and forty acres or arpents more or less. Also, the following slaves, attached to said plantation, "to wit," *Will*, *Lucy*, Parker, Claiborne, James, Suckey, Judey, June, Elenor, Daniel Clausey, Daniel Miles, Juda, Dinah, Rose, Eliza, Simon, Jonah, Jack, Hannah, Sally, Rachel, Myaula Sally, Abraham, Polly, Chiney, Frank, Maria, Alexander, Anderson, Milley, Edward, Samuel, Sarah, Peter, Nelly, Nace, Sara Cook, Jacob Wheeler, Lewis William, Zingo, John, and James, forty-eight in number; and also moveable, credits, money, &c., of about the value of four thousand; all of which will more fully appear by a public inventory thereof, made on the eight day of February, A. D. 1816, by Jno Perkins, then parish judge of said parish. Your petitioners shew that, in the month of A. D. 1818, the said John Perkins, who then resided in this parish, and now resides in the parish of Madison, and is made defendant in this suit, did, at the parish aforesaid, (Concordia,) intermarry with the said Mary Bynum, the mother of your petitioner Harriet, and surviving wife of the said Benjamin Bynum, and did then and there take into his possession all the property mentioned as aforesaid, and its increase, and did administer and manage the same until the 21 day of May, A. D. 1827, and was bound to your petitioner, Harriet, for a just, correct, and faithful administration during that time; that during said period, the said property, well managed and conducted, would have produced an average annual crop of three hundred and fifty bales of cotton, the average annual proceeds of which would have been twenty thousand dollars, amounting, for said term of time, to one hundred and eighty thousand dollars. In the one-fourth of which sum, or forty-five thousand dollars, the said John Perkins was indebted to your petitioner, Harriet, on the 29th of May, A. D. 1827, as *curator ad bona* of the said Harriet; and which sum of money he then and now holds in his hands, as curator aforesaid.

Your petitioner shews that, during the aforesaid term that the said Perkins had the administration of the aforesaid property, he appropriated the same and its revenues to his own use and benefit; that he neither cultivated the plantation nor made crops upon it, or leased out the same, as he was bound to do, but suffered it to run to waste and decay; and, in the commencement of his said administration, removed from it all the aforesaid slaves, attached to it and belonging to the said heirs of Bynum, and placed them upon his own land, and employed them exclusively for his own use and benefit; and, during the second year of said administration, through his carelessness, suffered the gin-house on said plantation, worth five thousand dollars, to be destroyed by fire; by means of which acts of maladministration, and others of a like nature, he became liable and bound to pay to your petitioner, Harriet, the sum of forty-five thousand dollars.

Your petitioner shew that, on the 29th day of May, A. D. 1827, the said Perkins, as curator ad bona aforesaid, rendered to the court of probates of the parish of Concordia a pretended account of his aforesaid administration since the year A. D. 1817, up to that date of the property of the said minors Bynum, which account is injurious and unjust

to your petitioner, illegal, null, and void; injurious and unjust, inasmuch as no detailed statement, account, and proof of the crops made and revenues accrued from the aforesaid property, during said time, was exhibited by the said Perkins, who merely allowed the said heirs, in said pretended inventory, an arbitrary annual supposable average crop, ranging from nothing to eighty-five bales cotton each year, found at arbitrary prices, but accompanied by no legal proof or voucher whatever. It is further injurious and unjust in imposing upon your petitioner heavy charges for the expenses of carrying on the aforesaid, for hire of overseers, hands, &c., &c.; which expenses were never incurred by said Perkins. It is unjust in containing erroneous and illegal charges against said heirs of Bynum, for their support, education, &c., a great part of which charges are unfounded, destitute of proof, and were never incurred. Said account is illegal, null, and void, for the foregoing reasons; and also because it was rendered ex parte, without petition, without vouchers or proof, without citation, and without appearance or answer of the curator ad lites of said minors.

Further shew, that said Perkins, as curator aforesaid, continued to administer the said property of your petitioner, Harriet, proceeding from the succession of her said father, and also that proceeding from that of her mother, Mary Bynum, who died in the year A. D. 1825, from the aforesaid 29th of May until the 7th day of April, A. D. 1832, when he presented to the probate court aforesaid a pretended account of his said administration; which account is unjust and illegal, null, and void, for all the causes and reasons herein urged against the account of the said curator, rendered on the 29th May, A. D. 1827, and because the said Harriet was not, on the said 7th April, A. D. 1832, nor thereafter, legally emancipated nor legally represented in said account of emancipation; that said proceedings *was* illegal, null, and void, being conducted without proper parties, without petition, citation, notice, or the appearance of the said Harriet, or of any person legally representing her. That in the year A. D. 1825, the said Mary Bynum, wife of said Perkins, departed this life, leaving a large amount of property, proceeding from the community with her first husband, the said Benjamin Bynum; and also the following property, then situate in the parish of Concordia, now situate in the parish of Madison, and now in the possession of said Perkins, belonging to the community between her and the said John Perkins, and of which the said Perkins never caused an inventory or appraisement to be made, to wit:

1st. 640 acres of land, purchased by said Perkins of Samuel Gustine, Dec. 2, A. D. 1819, as per record of said act of sale, in the office of the parish judge of this parish, in book C, pages 479 and 480.

2nd. 1,800 acres more or less, being three distinct tracts, purchased by said Perkins 1st March, A. D. 1820, of Gamaliel Pease, as per record of act of sales as aforesaid, in book C, pages 319 and 320.

(3d. 500 acres, purchased of Wm. Collins, 6th March, 1820, by said Perkins, as per record of sale, book C, pages 370, 371, and 372.

4th. 640 acres, purchased of C. Pettibone, curator, by said Perkins, Dec. 16, 1818, as per record, book C, pages 220 and 221.

5th. Of James Watson, curator of the estate of Charles Patterson, a tract of land containing acres, purchased by said Perkins 6th September, 1820, as per record book C, pages 459 and 460.

6th. Entered by said Perkins 516.82 acres, Dec. 27, 1821, as per record book "B," No. 281; also all the negroes in the possession of said Perkins, being one hundred and twenty-five in number, deducting from this number those being in his possession belonging to the community of Benj. Bynum and wife; your petitioner shews, that the aforesaid tracts of land are situated on the west bank of the river Mississippi, near Bayou Vidal, and are in the possession of the said Perkins, and either composed or lie adjacent, to the plantation now in the possession of said Perkins, called Somerset plantation; that the said Mary Bynum had two children by her marriage with said Perkins, named John and William Perkins, and that your petitioner, Harriet, as heir of her mother, is the owner of one undivided twelfth part of all the aforesaid community property, being the same undivided sixth part of the share of her mother, as partner in the community with the said John Perkins, and as such, has a right to compel a partition of said property, either in kind or by licitation. Your petitioner shews that, in his account rendered the 7th April, 1832, the said Perkins did not allow your petitioner, Harriet, for the fruits and revenues of her property, proceeding from the succession of her father and mother, and that they, from the 29th May, 1827, to that date, exceeded the expenses of administration by five thousand dollars, in which additional sum the said Perkins was then indebted to her; and that the said Perkins has never rendered or settled any final account of his administration with the said Harriet since her majority or emancipation, if she was ever legally emancipated, which is specially denied. Further shews, that on the 27th of May, A. D. 1834, your petitioner being ignorant of the facts set forth herein, of the maladministration of the said Perkins, and of the nullities and irregularities above described, gave the said Perkins a receipt acknowledging payment of all dues coming to them from the succession of the said Benjamin and Mary Bynum, or Mary Perkins, and released him from all liability in relation to the same, which receipt was given in error, and, on the 30th day of January, A. D. 1837, acknowledged in error and ignorance of the above facts, before the parish judge of Concordia; your petitioner charge said receipt to be null and void, for the above reason, and because it was an agreement made in direct contravention and violation of the 355 of the civil code, and because the said Perkins had not previously rendered and settled a final account, as required by the same article; in conclusion your petitioners charge, that they are entitled to enquire into all the accounts herein referred to, and into all the proceedings of the said Perkins in relation to the estate of the said Benjamin and Mary Bynum, and to compel him to render a just and full account of his doings and administrations upon the same, and to force a partition of the community property of the said Perkins and his wife, Mary Bynum. Wherefore petitioner prays, that

this petition may be duly served upon the said John Perkins, curator ad bona to the said Harriet, and that he be cited to answer in the delay of the law, that your petitioner, Harriet, be recognised as the daughter of, and heir of Benjamin Bynum and Mary Bynum, deceased, and be put in possession of her verile portion of their successions as heir, as set forth in the petition; that the John Perkins be ordered to render, within a delay to be fixed by your honor, a full and just account of all his doings, proceedings, and administrations to the said property, of the succession of Benjamin Bynum, since the 1st day of September, 1818, the date of his marriage with the said Mary Bynum, and upon the property of the succession of the latter up to this time; or that in default thereof, he be adjudged to pay your petitioner the aforesaid sum of fifty thousand dollars; that an inventory and appraisement be made of all the property of the community of said Perkins and his wife, Mary Bynum, whether the same be included in the petition or not; that a portion of the same be decreed between the said Perkins and your petitioner, Harriet; that this petition be received as an opposition to homologation of the amounts of the said Perkins, as curator, dated 29th March, A. D. 1827, and the 7th April, A. D. 1832, for the costs of suit, and for general relief in the premises, &c.

Signed, D. S. STACEY,
Attorney for petitioners.

Parish of Concordia, court of probates.

Having examined the within petition, it is ordered, that Harriet J. Bynum, wife of Edward P. Fourniquet, be recognised as the legitimate daughter and heir of Benjamin and Mary Bynum, decd., and that she be put in possession of her verile share, as heir of their successions. It is further ordered, that the defendant, John Perkins, render to this court within forty days after service of this petition and order, a full account of his administration, in relation to the successions of the said Benjamin Bynum and Mary Bynum, or Mary Perkins, 15th December, 1838.

Signed, G. W. KEETON, *Parish judge*.

Filed 15th Dec., 1838.

G. W. KEETON, *P. judge*.

EDWARD P. FOURNIQUET and his wife,
Harriet J. Bynum,
vs.
JOHN PERKINS.

In the probate court of the parish of Concordia, State of Louisiana.

The defendant, John Perkins, residing in the parish of Madison, cited to answer the petitions of the said Edward P. Fourniquet and Harriet, his wife, now comes into court by his counsel, and first, for exception to the said petition, this respondent denies the right of the plaintiff to have and maintain their action, on the following grounds, viz:

1st. Respondent excepts to the said petition on the grounds it embraces two distinct and separate causes of action; in regard to one of

which the plaintiffs are solely and exclusively interested as parties, while in regard to the other the plaintiffs are jointly interested with individuals who are not parties to the record; and that, therefore, the action to compel respondent to account as curator *ad bona* of the plaintiff cannot be united with the action of partition, as set forth in said petition.

2nd. Respondents except to that part of the said petition demanding a partition of property, alleged to have belonged to the community, which existed between respondents and the mother of the petitioner, Harriet, on the following grounds: 1st. That the petition itself discloses that there are *co-heirs* with the said Harriet, who are equally interested in said partition, who are not made parties to this suit. 2nd. That the children of this respondent, John Perkins and William Perkins, who are all minors, are interested in said partition; that your respondent's interest adverse to that of his said minor children, then under tutor, ought to have been made a party to the suit. 3d. That the plaintiff cannot *cannot* a partition of the community interest, alleged to the succession of the mother of said Harriet, separated from the partition of the other property *which* belonging to her succession, and that a judicial partition has been already made of the succession the father and mother of the said Harriet, to which, the said Harriet was legally a party before this honorable court; and that the plaintiffs cannot *mention* an action of partition without first annulling the judgment of this court, by which a final partition of said succession has been decreed.

Lastly. Your respondent excepts to the right of plaintiff to maintain an action against him to compel him to account as curator *ad bona*, on the ground that the petition itself discloses that an agreement was entered into between the plaintiff and respondent, by which they expressly acknowledged to have received all their share and portion of the said succession, and gave this respondent a full and final discharge from all liabilities resulting from his administration; and thus cannot maintain an action against him for an account, without first procuring the said agreement to be annulled by the final judgment of a competent tribunal in an action of nullity; and that this honorable court has no jurisdiction in such a case; and respondent excepts to its jurisdiction on that ground. Wherefore, respondent prays that the plaintiffs' suit be dismissed, at their costs.

Signed, A. N. OGDEN, *for resp.*

And should the foregoing exceptions be overruled, respondent, then answering, says, that he is in any manner bound or liable to render any account, as curator *ad bona* of the said Harriet, and denies, generally and specially, the allegation in said petition contained, except as hereafter admitted. Respondent admits that the said Harriet was one of the lawful children of Benjamin Bynum and Mary Bynum, and that respondent was appointed curator *ad bona* of the said Harriet. Respondent avers that he justly and faithfully administered the property of the said Harriet in his capacity aforesaid; that under the advice and assistance of the mother of the said Harriet, with whom respondent inter-

married in the month of August, 1818. This respondent endeavored faithfully to discharge the duties incumbent on him, in his capacity aforesaid, by bringing up the children of his said wife in a style and manner corresponding with their station in society; and, for that object, much time and labor, pains and money, were contributed by this respondent to secure to the said Harriet the advantages of education. Respondent shews, that on the 29 day May, 1827, he exhibited in this honorable court his accounts of administration of the property belonging to the succession of the father and mother of said Harriet, before the partition among the heirs thereof, shewing that revenues of said property had not been sufficient to defray the expenses of the maintenance and education of the said children, in the manner and style in which they had been raised and educated, and that respondent had expended for the sum of seven thousand three hundred and eighty-eight 61¼ beyond the revenues of their property; that said accounts were supported by the testimony of the most respectable witnesses, and allowed by the judgment of the court conditionally with the under tutor of the said Harriet, and on examination of the evidence; which said accounts, and judgment thereon, are of record in your honorable court, and are specially referred to.

Respondent further shews, that, on the 9th May, 1827, a partition of the property belonging to the said succession was made by a decree of the probate court, and the part and portion of the said Harriet allotted to her; and that, on the 7th April, 1832, respondent exhibited to this hon. court his accounts as curator ad bona of the said Harriet; which said accounts were examined and allowed by the court, conditionally with the curator ad lites of the said Harriet.

Respondent further shews, that, in 1829, Benjamin Bynum, the brother of petitioner, Harriet, removed her negroes to the State of Mississippi, having first given to this respondent a bond of indemnity; that, in 1830, the said Benjamin died, and the said Harriet became entitled, as heir, to a part of his property in Mississippi; that the said Harriet then selected respondent as her guardian in Claiborne county, State of Mississippi, where her property then was; and respondent, in the month of April, 1833, rendered his accounts to the orphans' court of Claiborne county, shewing a balance due to him by said Harriet; all of which accounts aforesaid rendered by respondent were approved by the said Harriet after she became of the age of majority, and after her marriage; and in the month of May, 1834, the said Harriet and her said husband executed the said agreement releasing said respondent from all further claims arising from his administration of the estates of her father and mother, and her brother, Benjamin Bynum; and on the 13th day of January, 1837, acknowledged the same before the parish judge of Concordia, as will fully appear by said agreement to be produced on the trial. Respondent denies that said discharge was executed in ignorance and error, as now pretended by said plaintiffs, and he now pleads the same as good and legal defence against the present action, and prays that the demand of the plaintiffs be rejected, and that they be sentenced

to pay the costs of suit. And for answer to the plaintiffs' demand for a partition, should the exceptions to that part of the action be also overruled, respondent answers, that, on the 29 May, 1827, a judicial partition of the succession of the father and mother of the said Harriet was made, and that the said Harriet is in possession of the property allotted to her on that plantation, with the exception of a portion which she has since sold. That respondent, in compliance with the wishes expressed by the mother of said Harriet in her last will and testament, which was not valid in law after the said partition, conveyed to the said Harriet, and the other children of Benjamin Bynum, the property which was allotted by the partition to respondent's two children, John and William; and that they also received their portion *with* respondent's two children were entitled to in the share of their mother in the succession of two of the children of Benjamin Bynum, their father, who died after him; and also the portion belonging to the respondent and his two children in the succession of one of the children of this respondent, who died after the mother of said Harriet, and that the said Harriet did then receive more than her legal share of the said successions.

Respondent also shews that, after the said partition be made to each of the children of his deceased wife, a donation of a valuable tract of land, that he conveyed, on the 25th December, 1833, to the husband of said Harriet, intended for her, about three hundred and thirty-three acres of land, in Claiborne county, Mississippi; and that the said Harriet, and also all the other heirs, have since that time, by a formal act in writing, acknowledged to have received all their share and portion of their mother's estate; and that they cannot now be permitted to demand any other or further portion whatever; and that if permitted to do so, they are bound to bring back the property they have so received. Respondent denies the existence of the community of property, as alleged by the plaintiffs, and aver that all the negroes in his possession, at the death of said wife, were this respondent's separate property, except those which were divided among the heirs aforesaid; and that he *was* not now in his possession any negroes, except such as were purchased and owned by him, either prior or subsequent to the marriage aforesaid. Respondent further avers, that the alleged purchases of lands, during the community, were the purchases of unsettled claims to lands—a part of which only had been confirmed and located since the disposition of the community; and that said Harriet, as well as the other heirs, have already received, in the lands given to them by respondent as aforesaid, more than an equivalent for any interest they may have had therein; and that their acknowledgments and relinquishments aforesaid ought now to be a legal and sufficient bar against any such claim on their part; that the tract of six hundred and forty acres, alleged to be community, as purchased from C. Pettibone, is the separate property of respondent, having been purchased by him since the disposition of the community, of Israel Loring; that the tract of land of five hundred and sixteen acres, entered by respondent in 1821, is his

separate property, being the back concession of land purchased by respondent in 1806, long prior to his marriage aforesaid.

Wherefore, in consideration of the premises, respondent prays that the demand of the plaintiffs be rejected; and that they be sentenced to pay the costs of suit, and for general relief.

Signed, A. N. OGDEN, *Att'y for Resp.*

Filed 6th February, 1839.

G. W. KEETON, *Parish Judge.*

EDWARD P. FOURNIQUET and WIFE
vs.
JOHN PERKINS.

To the honorable George W. Keeton, judge of the court of probates in and for the parish of Concordia, State of Louisiana.

The supplemental and amended petition of Edward P. Fourniquet and his wife, Harriet J. Fourniquet, hy her said husband herein authorized and assisted, further discloses that, in the year A. D. 1830, Benjamin Bynum, the brother of your petitioner, Harriet, died intestate without leaving either descendant or ascendents; and that she is the heir of said Benjamin for the one-third part of his succession, which she hereby accepts under the benefit of inventory; that the said Benjamin was the heir of his father and mother, Benjamin and Mary Bynum, and such entitled to receive the one-fourth part of their succession; that John Perkins administered, as curator *ad bona*, the property of the said minor Benjamin, under the appointment from the court of probates of the parish of Concordia; and that the said Perkins never rendered and settled a final account of his administration aforesaid to the said *to the said* Benjamin after he had arrived at the age of majority; that your petitioners are entitled to have final administration of the property of the said Benjamin rendered by said Perkins, in order that they may receive their distributive share of his succession. Wherefore petitioners pray that the said John Perkins be ordered to render a full and final account of his administration of the property of Benjamin Bynum, deceased; and they be adjudged to receive this distributive share of the amount that may be found due to the heirs of the said Benjamin; and that, in default thereof, your petitioner be decreed to recover of the said Perkins the sum of ten thousand dollars, and for general relief in the premises, &c.

Signed, D. S. STACY, *Att'y for Pets.*

Filed 12th Feb'y, 1839.

G. W. KEETON, *P. Judge.*

E. P. FOURNIQUET AND WIFE
vs.
JOHN PERKINS.

Probate court, parish of Concordia:

The defendant, John Perkins, for exceptions to the supplemental petition filed by plaintiff, claiming a rendition of accounts by him as *cura-*

tor ad bona of Benjamin Bynum, deceased, pleads the same matters and things set up in the original exception on file; and furthermore, excepts that the children of respondent, viz., John and William Perkins, brothers of the half blood of the said Benjamin, should be made parties to this action. And should the exceptions be overruled, for answer to the merits, defendants plead also the same defence set up in the original answer; and furthermore, avers that the said Benjamin was always, during his life, well pleased and satisfied with the administration of respondent of his estate, and did examine and approve the accounts rendered by respondents to this honorable court; and, on the 10th day of April, 1829, did execute a final release and discharge in favor of respondent, acknowledging to have received all his share and portion of the estate of his deceased father and mother, and releasing respondent from all liabilities therefor; and respondent now pleads the in bar of the present action, and prays that the demand of plaintiff be rejected, and that they be condemned to pay the costs of suit, and for general relief.

Signed, A. N. OGDEN,
Attorney for respondent.

Filed, 12th July, 1839.

G. W. KEETON, *P. judge.*

E. P. FOURNIQUET and wife,
vs.
JOHN PERKINS.

Ninth district court, parish of Concordia, December term, 1840; 10th agreement of parties filed.

E. P. FOURNIQUET and wife,
vs.
JOHN PERKINS.

Ninth district court, parish of Concordia.

In this case, transferred by consent from the court of probates, it is agreed between the counsel, that all objections as to the manner of issuing and executing commissions to take testimony are waived, and that all evidence, which has been taken under commissions returned, shall be read in evidence, subject only to such objections as may be made to the legality of the evidence itself.

Signed, D. S. STACY,
A. N OGDEN.

Filed, 10th December, 1840.

W. T. PROUT, *Clerk.*

E. P. FOURNIQUET and wife,
vs.
JOHN PERKINS.

On motion of plaintiff's counsel, ordered, that judgment of nonsuit be entered upon all that part of his petition which prays for a partition of the property of the community of John Perkins and wife.

E. P. FOURNIQUET and wife,
vs.
JOHN PERKINS.

The following jurors were empannelled and sworn in this case, viz: Solomon B. Strumphy, William Whitney, William Mardis, Ben. F. Glasscock, Eben Bowman, William Dix, Abner Smalley, Nathaniel Green, Jesse Chittenden, Tobias Gibson, Jesse Gince, John Jemison.

Rendered verdict for defendant.

JESSE GINCE, *Foreman*.

E. P. FOURNIQUET and wife,
vs.
JOHN PERKINS. No. 617.

The court rendered the following judgment: By reason of the law and the evidence, and the verdict being in favor of defendant, it is therefore ordered, adjudged, and decreed, that judgment be rendered in favor of the defendant, and that he recover *this* costs to be taxed.

Done and signed in open court, this 24th day of December, A. D. 1840.

JAMES DUNLAP,
Parish judge, presiding in district court of Concordia.

Filed, 24th December, 1840.

W. T. PROUD, *Clerk*.

State of Louisiana, parish of
Concordia, ninth district court:

I, W. R. C. Vernon, deputy clerk of the district court of the ninth judicial district of the State, and for the *the* parish aforesaid, do hereby certify, that the foregoing, from page one to eight inclusive, composing the record, contain a true and correct copy of the *petition, supplemental petition, answer, and supplemental answer, agreement of counsel, verdict of jury*. Judgment order of court, in the suit of Edward P. Fourniquet and wife vs. John Perkins, No. 687, on file, and of record in this court.

In testimony whereof, I hereto set my hand, as deputy clerk, and the seal of said court, this fourteenth day of December, A. D. eighteen hundred and forty-four.

[SEAL.]

Signed, W. R. C. VERNON,
Deputy clerk.

And afterwards, to wit, on the 11th day of January, A. D. 1845, the following motion was entered of record, to wit:

On motion of E. P. Fourniquet, it is ordered by the court, that the plea in bar, interposed in this case, be set for argument on the first Monday in April, A. D. 1845.

And afterwards, to wit, on the 7th day of April, 1845, the following order of submission was entered of record herein, to wit:

This cause came on to be heard on the plea in bar filed herein, set for argument on the 11th of January, 1845, when the defendant appeared by his counsel, Jno. R. Grymes, esq., and the complainants, either in person or by counsel. Whereupon, the same being submitted without argument, the court took time to consider.

And afterwards, to wit, on the 10th day of April, A. D. 1845, the following decree was rendered on the plea in bar herein interposed, to wit:

E. P. Fourniquet et ux.,
vs.
Jno. Perkins.

Present: Hon. T. H. McCaleb, district judge.
The Hon. Jno. McKinley, presiding judge, absent.

This cause came on to be heard at this term, and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed, as follows, viz: That the plea of the said defendant, by him pleaded in bar to the bill of the said complainants, be sustained, and judged a good and sufficient bar to the said plaintiff's action, as set forth in his bill, and that the said complainants' bill be dismissed, with costs.

Judgment rendered April 10th, 1845.
Judgment signed April 23, 1845.

Signed, THEO. H. McCALEB,
U. S. judge.

And afterwards, to wit, on the 15th day of April, 1845, came the complainants, by their solicitor, John Henderson, esq., and made the following motion, which was entered of record, to wit:

On motion of John Henderson, esq., the counsel for complainants, it is ordered, that the defendant, by his counsel, show cause, on Friday next, at 10 o'clock, A. M., why the order of judgment, on the defendant's plea, made at this term, should not be set aside, and a re-argument be allowed to complainants.

And on the same day, the following affidavit was made by complainants' solicitor, to wit:

"In the case and matter above referred to, John Henderson, solicitor for the complainants, states, that he coincided with the complainants in filing their bill in said case, and was fully admonished of the defence which has been presented by the defendant's plea; but was then, and is now, of opinion said plea was not good in law, to bar the complaint presented; that deponent did not know that the case was set down for argument, and conversing with the complainant, Fourniquet, on this direct question, within ten days past, *he* said nothing of its being set down for argument, and deponent believes the fact, that it was set down, must have passed from his memory, and for this cause the argument on part of complt. *was* not heard. Deponent is desirous to be heard in argument on this plea, and the omission heretofore was no neglect on his part, and, as he believes, no intentional omission on part of his client.

JNO. HENDERSON,
Sol. for complts.

Sworn to and subscribed before me, this 15th April, 1845.

For D. N. HENNEN, *Clerk*,
J. Q. A. HOIT, *Dy. Clerk.*

And afterwards, to wit, on the 18th day of April, 1845, the following motion was made by John R. Grymes, solicitor for defendant, and entered of record, to wit:

On motion of J. R. Grymes, esq., of counsel for the respondent, it is ordered, that the motion for a new trial herein be continued until to-morrow, at 9 o'clock, A. M.

And afterwards, to wit, on the 19th day of April, 1845, the following continuance was entered of record herein:

The rule taken herein by complainants, on the defendants, to set aside the judgment rendered herein, and allow a re-argument on the defendant's plea, filed in this case, having been called, J. Henderson, esq., appearing for the complainants, and J. R. Grymes, esq., for the defendant; when, on motion of J. R. Grymes, esq., it is ordered, that the same be continued until Monday next, at 9 o'clock, A. M.

And afterwards, to wit, on the 21st day of April, 1845, the following order of submission was entered of record herein, to wit:

The rule taken herein by the complainants, on the defendants, to set aside the judgment in this case, and allow a re-argument on the defendant's plea, filed herein, having been called, J. Henderson, esq., appearing for the complainants, and J. R. Grymes and A. N. Ogden, esquires, for the defendant; when, after hearing the arguments of counsel, the court took the same under advisement.

And afterwards, to wit, on the 22d day of April, A. D. 1845, the following order, dismissing the rule taken by complainants on defendant for re-argument on this cause, and granting complainants an appeal to the Supreme Court of the U. S. from the decree rendered against them on the 10th April, A. D. 1845, dismissing their bill, was entered of record, to wit:

E. P. Fourniquet and wife
vs.
John Perkins
} No. 1,267.

The court having maturely considered the rule taken by the complainants, on the defendant, to set aside the decree rendered in this case, and allow a re-argument on the defendant's plea, filed herein, do now order and adjudge, that said rule be dismissed at complainants' costs.

On motion of John Henderson, esq., of counsel for the complainants, an appeal is allowed the complainants to the next term of the Supreme Court of the United States, from the decree rendered against them on the 10th April, 1845, upon complying with the requisitions of the law.

Know all men by these presents, that we, E. P. Fourniquet and John Henderson, are held and firmly bound, jointly and severally, unto John Perkins, in the sum of five hundred dollars, lawful money of the United States of America, to be paid to the said John Perkins, his heirs, executors, administrators, and assigns; for which payment, well and truly to be made, we bind ourselves, and each of us by himself, and each of our heirs, executors, and administrators, firmly by these pre-

sents. Sealed with our seals, and dated the twenty-ninth day of November, in the year of our Lord eighteen hundred and forty-five.

Whereas, on the 22d day of April, A. D. 1845, E. P. Fourniquet and wife, complainants in a certain cause lately determined in the circuit court of the United States for the fifth judicial circuit, in equity, sitting for the district of La., wherein said E. P. Fourniquet and wife were complainants, and John Perkins, defendant, feeling aggrieved at a decree rendered by said court, on the 10th day of April, A. D. 1845, dismissing their bill, have prayed for and obtained an appeal therefrom to the Supreme Court of the United States, returnable at the next term thereof, upon E. P. Fourniquet executing bond, with John Henderson as security, payable to the defendant, John Perkins, in the penal sum of five hundred dollars, conditioned to pay all costs that defendant may sustain, if said decree should be affirmed by the Supreme Court of the United States.

Now, the condition of the above obligation is, that if we, the above bounden E. P. Fourniquet and John Henderson, will well and truly pay to the said John Perkins, the defendant in said appeal, all such costs as said Perkins may recover against us, in case said decree should be affirmed, this bond to be in full force and virtue; otherwise to be void.

E. P. FOURNIQUET, [SEAL.]
JOHN HENDERSON. [SEAL.]

Signed, sealed, and delivered, in presence of—
F. N. HARALSON.

Circuit court of the United States,

For the fifth judicial circuit, district of Louisiana:

I, Francis N. Haralson, deputy clerk of the circuit court of the United States for the fifth judicial circuit and district of Louisiana, do hereby certify, that the foregoing ninety pages contain a full, faithful, and true transcript of the record and proceedings in the case of E. P. Fourniquet et ux. vs. John Perkins, so far as the same now remain on file of original record in said court.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of said court, at the city of New Orleans, this third day of December, A. D. 1845. [SEAL.]

Att. F. N. HARALSON, *Dy. Clerk.*

I, Theodore H. McCaleb, judge of the district court of the United States, for the district of Louisiana, and one of the judges of the circuit court of the United States for the fifth judicial circuit of the United States, do hereby certify, that Francis N. Haralson, who signed the foregoing certificate, is deputy clerk of the circuit court of the United States for the fifth judicial circuit and district of Louisiana, and was at the time of so doing; and that full faith and credit are due to his acts as such, and that the foregoing certificate is in due form of law.

Witness my hand and seal, this third day of December, A. D. 1845.

THEO. H. McCALEB. [SEAL.]

Filed, Dec. 12, 1845.

590.

SUPREME COURT OF THE UNITED STATES.

No. 148.

EBENEZER IRVING & AL., PLAINTIFFS IN ERROR,

vs.

MAXWELL WILSON.

IN ERROR TO THE DISTRICT COURT U. S., FOR THE NORTH'N DIST. OF MISSISSIPPI.

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J. & G. S. Gideon, Printers.

Exemplification.

EBENEZER IRVING et als., vs. MAXWELL WILSON. } 1,354.

Pleas had at a district court of the United States for the northern district of Mississippi, began and held at the town of Pontotoc, in said district, on the first Monday of December, A. D. 1840.

Present, the Hon. Samuel J. Gholson, judge of said court.

Be it remembered, that on the 27th day of November, A. D. 1840, Ebenezer Irving, Daniel Low, and Waldron B. Post, citizens of the State of New York, sued out of the office of the clerk of the district court of the United States for the northern district of Mississippi, their certain summons, in the words and figures following, to wit:

United States of America,
Northern district of Mississippi, ss:

The President of the United States to the marshal of the northern district of Mississippi, greeting:

We command you, without delay, to summon Maxwell Wilson, a citizen of the State of Mississippi, residing in the northern district thereof, that he be and appear before the district court of the United States, to be held at the town of Pontotoc, in and for the northern district of Mississippi, on the first Monday of December next, to answer to Ebenezer Irving, Daniel Low, and Waldron B. Post, citizens of the State of New York, of a plea of trespass on the case, upon promises, to their damage five thousand dollars; and that he do file his plea of defence with the clerk of said court on or before the meeting of the same, or judgment will be given against him by default, and have then there this writ.

Witness Samuel J. Gholson, esq., judge of said court, at Pontotoc, in said district, this 27th day of November, A. D. 1840, and of the independence of the United States the sixty-fifth.

G. M. RAGSDALE, *Clerk.*

Which summons is endorsed as follows, to wit: "This is an action of assumpsit, founded on a promissory note executed by the defendant to the plaintiffs, of date the 7th day of December, 1839, and payable three months after date, for $4,000, subject to a credit of $500 on the 7th day of December, 1839; the residue of $3,500, with legal interest thereon from the 7th day of March, 1840, is the sum actually demanded. Judgment will be required at the return term of this writ. No bail is required.

A. M. CLAYTON,
Atto. for plaintiffs."

Upon which said summons the marshal made the following return,

to wit: "Received 27th day Novemb er; November 28th, 1840, executed on defendant Wilson, by handing a true copy to his sister; himself and wife both absent.

A. G. WEIR, *M. N. D. M.*
By ROBERT CARUTHERS, *Dy.*"

And the said plaintiffs, by attorney, filed, at the time of issuing said summons, their declaration, in the words and figures following, to wit:

United States of America, State of Mississippi:

District court of the United States for the northern district of said State, at Pontotoc, December term, 1840.

Ebenezer Irving, Daniel Low, and Waldron B. Post, citizens of the State of New York, by attorney, complain of Maxwell Wilson, a citizen of the State of Mississippi, residing in the northern district thereof, who is in custody, &c., of a plea of trespass on the case, upon promises; for that whereas, heretofore, to wit, on the 7th day of December, 1839, at Hernando, to wit, at the district aforesaid, the said defendant made and executed his certain promissory note, in writing, bearing the date aforesaid, and thereby promised in three months (meaning thereby in three months after the said date) to pay the plaintiffs, by the names and descriptions of E. Irving, Daniel Low, and W. B. Post, or order, the sum of four thousand dollars, for value received, and then and there delivered said promissory note to the plaintiffs, and thereby undertook and promised to pay the same, according to the tenor and effect thereof. And whereas, also, heretofore, to wit, on the 20th day of November, 1840, at the district aforesaid, the said defendant was indebted to the plaintiffs in the sum of five thousand dollars, for money found to be due from the said defendant to the plaintiffs upon an account stated between them; and also in the further sum of five thousand dollars, for money before that time had and received by the said defendant, to the use of the plaintiffs; and also in the further sum of one thousand dollars, for money due as interest upon certain sums of money due from the said defendant to the plaintiffs; and being so indebted, he, the said defendant, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at the district aforesaid, undertook and promised to pay the said several sums of money in this count mentioned, to the plaintiffs, on request; yet the said defendant has disregarded his said several promises, in form aforesaid made, and has not, although often requested so to do, paid to the plaintiffs, or to either of them, the said several sums of money, or any or either of them, or any part thereof; but to pay the same, or any part thereof, he hath hitherto wholly neglected and refused, and still doth neglect and refuse so to do, to the damage of the plaintiffs five thousand dollars; and therefore they sue, &c.

A. M. CLAYTON,
Atto. for plaintiffs.

Copy of the note sued on in this case, to wit:

"4,000 dolls. — cts. HERNANDO, *December* 7, 1839.

For value received, I, the subscriber, of the county of Lincoln, and State of North Carolina, promise to pay E. Irving, Daniel Low, and W. B. Post, or order, four thousand dollars cents, in three months.

MAXWELL WILSON."

Endorsed on the back thus: "Hernando, 7 December, 1839; credit the within note by five hundred dollars, $500.

E. ORNE,
Per HAMMOND WHITNEY."

The plea of defendant, filed at the December term of said court, 1840, supposed to have been endorsed on the original declaration, and therewith lost, has not been supplied.

Proceedings had in the foregoing cause, afterwards at the December term of said court, 1840, in the words following, to wit:

MONDAY, *December the* 14*th*, 1840.

EBENEZER IRVING et al., vs. MAXWELL WILSON. } 90.

This cause is continued, by operation of law, until the next term of this court.

Afterwards, to wit, on the 9th day of June, A. D. 1841, being a day of the June term of said court, the further proceedings were had in the foregoing cause, to wit:

WEDNESDAY, *June the* 9*th*, 1841.

EBENEZER IRVING et al., vs. MAXWELL WILSON. } 121.

This cause is continued, by consent of the parties, until the next term of this court.

And the defendant, by attorney, filed at the December term of said court, 1841, his amended plea, in the words and figures following, to wit:

United States of America,
the State of Mississippi, and northern district:

Pontotoc district court, December term, 1841.

EBENEZER IRVINE and others, vs. MAXWELL WILSON. }

And the said defendant, by leave of the court, comes and defends the wrong and injury, when, &c., and for further plea in this behalf says, *actio non;* because, he says, that after the making of the promissory note in the declaration mentioned, to wit, on the 7th December, 1839, at Hernando, in said northern district, in consideration that the said plaintiffs had agreed and promised said defendant, that if he, said de-

fendant, would procure and purchase for said plaintiffs the promissory notes of the Hernando Railroad and Banking Company, to the amount of the promissory note in the declaration mentioned, within three months from the date of said promissory note, that they, the said plaintiffs, would accept and receive of and from said defendant the said notes of said Hernando Railroad and Banking Company, in full satisfaction and discharge of said promissory note in the plaintiffs' declaration mentioned; and thereupon the said defendant did then and there, in consideration of the promise aforesaid, undertake and promise said plaintiffs that he would, within said three months, procure, purchase, and deliver, to said plaintiffs, the notes of said Hernando Railroad and Banking Company, to the full amount of the note in plaintiffs' declaration mentioned; and defendant avers and says, that he did procure and purchase the notes of said Hernando Railroad and Banking Company for said plaintiffs, to the full amount of the note in said declaration mentioned, and did offer and tender them to the said plaintiffs within three months from the date of said promissory note in the declaration mentioned, in full discharge and satisfaction thereof, to wit, at Hernando aforesaid, on the 7th day of March, 1840, which said plaintiffs then and there refused to receive; and said defendant further avers and says, that he is still ready and willing, *and is still ready and willing*, and here brings into court the said notes of said Hernando Railroad and Banking Company, and offers the same to said plaintiffs in discharge and satisfaction of the said note in the declaration mentioned, and this the said defendant is ready to verify; wherefore he prays judgment, &c.

TOLTON & CHALMERS,
Attos. for defendant.

Plaintiffs' demurrer to the foregoing plea, filed at said December term, 1840, in the words and figures following, to wit:

EBENEZER IRVING and al.,
vs.
MAXWELL WILSON.

And the said plaintiffs, by their attorney, come and say, that the amended plea of said defendant, and the matters therein contained, in manner and form as the same are therein stated and set forth, are not sufficient in law to bar or preclude the said plaintiffs from having and maintaining their said action thereof against him, and that they are not bound by the laws of the land to answer the same, and they do therefore demur to the same; and for causes of demurrer do state and show the following: 1st. That there is no consideration alleged or stated in said plea for said agreement, and the same is therefore void. 2nd. That said agreement is not alleged to be in writing, and that no parol evidence should be admitted, to vary or alter the writing in the said declaration mentioned. For these, and divers other reasons, the said plaintiffs doth demur, and crave the judgment of the honorable court, whether they shall be required to put in any other or further answer to said plea; wherefore, &c.

A. M. CLAYTON, *Atto. for plaintiffs.*

EBENEZER IRVING and al.,
vs.
MAXWELL WILSON.

And the said plaintiffs, by their attorney, come and say, that the said amended plea of said defendant, and the matters therein contained, in manner and form as the same are therein stated and set forth, are not sufficient in law to bar or preclude the said plaintiffs from having their said action, and do demur to the same; and for cause of demurrer state and show the following: First. That said agreement in said plea mentioned is not stated in said plea to have been in writing. Second. That said plea, if allowed, would admit the introduction of parol evidence, to vary and alter the effect of a written agreement. Third. That there is no valid consideration stated for said promise or agreement. Fourth. That said plea purports to substitute a new and parol agreement in lieu of the promissory note sued upon, without any new consideration for said agreement. Fifth. That said plea does not state that said agreement has been executed. Sixth. That said plea does not state whether the plaintiffs agreed and promised that, if defendant would purchase Hernando notes, they would receive the same before or after the execution of said promissory note in said plea mentioned. For these, and divers other reasons, the said plaintiffs do demur, and pray the judgment of the court, whether they shall be required to put in any other or further answer to said plea, joinder in demurrer.

A. M. CLAYTON,
Att. for plaintiffs.

TOLTON & CHALMERS,
Atts. for defendant.

Afterwards, to wit, on the 30th day of December, being a day of the December term of said court, 1841, the following proceedings were had in the foregoing cause, to wit:

THURSDAY, *December the* 30*th*, 1841.

EBENEZER IRVING et al.,
vs.
MAXWELL WILSON. 37.

This day came the parties, by their attorneys, and then came on to be heard plaintiffs' demurrer to defendant's plea; and, after argument, it is considered by the court that the same be sustained, and that defendant have leave to plead over, upon paying all the cost of this suit up to this time.

And, after which said order of court, defendant, by attorney, filed other pleas, in the words and figures following, to wit:

The United States of America,
State of Mississippi, and northern district thereof:

District court of U. S., at Pontotoc, December term, 1841.

EBENEZER IRVING and others,
vs.
MAXWELL WILSON.

And the said defendant, by attorney, comes and defends the wrong

and injury, when, &c., and for plea in this behalf says, *actio non;* because, he says, that after the making and delivering of the promissory note in the declaration mentioned, to wit, on the 7th of December, 1839, at Hernando, in the northern district of Mississippi aforesaid, in consideration that this defendant, at the special instance and request of the plaintiffs, undertook and promised them to procure, purchase, and deliver to them, the sum of four thousand dollars of the post-notes of the Hernando Railroad and Banking Company, within three months from the date of the said promissory note mentioned in the declaration; the said plaintiffs, in consideration thereof, then and there agreed, undertook, and promised the said defendant, that they would deliver said promissory note to the defendant within three months from date thereof.

And said defendant further avers and says, that after the making of the said promise and agreement aforesaid, that he did deliver and pay to the plaintiffs aforesaid the sum of five hundred dollars of the post notes of said bank, which were accepted and received by the plaintiffs, as part performance of his said promise and agreement, to wit, on the 7th of December, 1839, at Hernando, in the district aforesaid. And the said defendant further says, that he did, within three months from the date of said promissory note, procure, purchase, and tender, and offer to the plaintiffs, the farther sum of three thousand five hundred dollars of the post notes of said bank, making in all the sum of four thousand dollars, to wit, on the 7th of March, 1840, at Hernando, in the district aforesaid, which said money said plaintiffs then and there refused to receive. And the said defendant further says, that from the time of making the said tender and offer to the present time, that he has always been ready and willing, and is still ready and willing, to pay and deliver to the plaintiffs the residue of said sum of $4,000, of the post notes of said bank, and brings them here into court, and offers them to the said plaintiffs. All which he is ready to verify; wherefore, &c.

TOLTON & CHALMERS,
Atty. for deft.

"And said defendant for *ther* plea in this behalf says, actio non; because he says, that after the making and delivering of the note in the declaration mentioned, to wit, on the 7th of December, 1839, at Hernando, in the northern district of Mississippi, in consideration that the defendant, at the special instance and request of the plaintiffs, undertook and promised them to purchase, procure, and deliver to them, the sum of four thousand dollars of the post notes of the Hernando Railroad and Banking Company, within three months from the date of the note in the declaration mentioned; they, said plaintiffs, then and there undertook and promised the said defendant to accept, and receive the same in the stead lieu of the money, in the said note in the declaration mentioned, and to waive all others and further payment thereof. And the said defendant further says, that he did, afterwards, on the day and year last aforesaid, at Hernando, in the district aforesaid, procure, pay, and deliver to the plaintiffs, the sum of five hundred dollars of the post notes of said banking company, which were then and there received, and ac-

cepted by plaintiffs, as part performance of the promise and assumption aforesaid of this defendant. And the said defendant further avers and says, that within three months from the date of the note in the declaration described, that he did procure and purchase the sum of three thousand five hundred dollars more of the post notes of said banking company, being the residue of the sum of $4,000, agreed to be paid in the post notes of said banking company as aforesaid, and did, within the three aforesaid, tender and offer to the plaintiffs the said sum of $3,500, of the post notes of said banking company, in full compliance of his said promise and undertaking as aforesaid, which the said plaintiffs then and there refused to accept and receive. And the said defendant further avers and says, that from the time of making said tender and offer to the present time, he has always been ready and willing, and that he is now ready and willing, to deliver and pay said plaintiffs the said sum of $3,500, of the post notes of said bank, the residue of said sum of $4,000, and brings the same here into court, and offers the same to the plaintiffs. All which he is ready to verify; wherefore.

TOLTON & CHALMERS."

Plaintiffs' demurrer to defendant's amended pleas, filed at said December term of said court, 1841, as follows, to wit:

Demurrer to amended pleas in short by consent.

Causes 1st. Said pleas are multifarious, and no replication can be filed to them, taking issue upon a single point. 2d. That said pleas do not set out a subsequent independent contract, by which the contract sued on was annulled or discharged, and which the plaintiffs could have enforced by suit against said defendant. No consideration for said agreement.

CLAYTON, *For plffs.*

Plaintiffs' replication to the foregoing pleas, filed 1st day of January, 1842, in the words and figures following, to wit:

"Ebenezer Irving & al.
vs.
Maxwell Wilson.

And the said plaintiffs by their attorney, for replication to the first of said amended pleas, come and say, that by reason of anything therein contained, they ought not to be barred from having and maintaining their said action against him; because they say, that after the making and delivering of the said promissory note, in said plea mentioned, they did not request the said defendant to procure, purchase, and deliver to them the sum of $4,000 of the post notes of the Hernando Railroad & Banking Company, within three months from the date of the said promissory note; and that they did not agree, in consideration of the defendant's promise so to do, that they would deliver said promissory note to said defendant within three months from the date thereof; and of this they put themselves upon the country, &c.

A. M. CLAYTON, *Atty. for plffs.*

"And defendant likewise. TOLTON & CHALMERS.

"And for replication to the second amended plea of said defendant

said plaintiffs say, precludi non, because they say, that after the making and delivering of the note in the declaration mentioned, the said defendant did not, at their special instance and request, undertake and promise to purchase, procure, and deliver to them the sum of $4,000 of the post notes of the Hernando Railroad and Banking Company, and that they did not undertake and promise the said defendant to accept and receive the same, within three months from the date of said promissory note, in lieu and stead of the money in the said note in the declaration mentioned, and to waive all others and further payment thereof; and of this they put themselves upon the country; wherefore, &c.

A. M. CLAYTON, *Atty. for plffs.*

"And defendant likewise. TOLTON & CHALMERS.

Afterwards, to wit, on the 1st day of January, 1842, being a day of the December term of said court, the further proceedings were had in the aforesaid cause, to wit:

"EBENEZER IRVING et al.
vs. } 37.
MAXWELL WILSON.

Saturday, January the 1*st*, 1842.

This cause is continued by consent of parties until the next term of this court."

And afterwards, to wit, on the 22d day of January, 1842, a writ of fi. fa. issued for the cost in the foregoing case, pursuant to the order of court first above written, at Dec. term, 1841, as follows, to wit:

District court of the United States,
Northern district of Mississippi, ss:

The President of the United States, to the marshal of the northern district of Mississippi, greeting:

We command you, that of the goods and chattels, lands and tenements, of Maxwell Wilson, late of your district, you cause to be made the sum of one hundred and twenty-two dollars and seventy-six cents, which Ebenezer Irving, David Low, and Waldron B. Post, lately in the district court of the United States for the district aforesaid, at a court held at Pontotoc, on the first Monday of December, 1841, have recovered against him for their costs and charges by them expended in and about a certain action brought in said court, wherein the said Ebenezer Irving & als. were plaintiffs, and the said Maxwell Wilson is defendant, whereof the said defendant is convicted, as appears of record; and that you have the said moneys before the judge of said court on the first Monday of June next, to render unto the said plaintiffs for their costs and charges aforesaid; and have then there this writ.

Witness the honorable Samuel J. Gholson, judge of said district court, at Pontotoc, the first Monday of December, A. D. one
[L. S.] thousand eight hundred and 41, and in the 66th year of the independence of the United States of America.

Issued the 22d day of January, 1842. G. M. RAGSDALE.

Clerk's fees.	Dols.	Cts.
Issuing writ,	3	33⅓
Docketing,		66⅔
Filing papers,	1	66⅔
Entering appearances,	1	33⅓
Motions,		66⅔
Orders,		66⅔
Judgment by default,		
Swearing witness,		
Continuances,	1	00
Supœnas,	2	50
Swearing and empannelling jury,		
Receiving and entering verdict,		
Entering judgment for cost,		25
4 certificates, 25 each,	1	00
Taxing cost, and copies,	1	00
Issuing execution, and seal thereto,	1	00
Entering return, and filing,		
Issuing commissions,		
Copies of interrogatories,		
Entering dismission,		
Making up record,		
	15	21
Witnesses attendance,		
Wm. L. Beard,	17	50
John Carruth,	18	00
John Kincande,	19	30
Attorney's tax fee, (Edward Orne,)	15	50
	70	30
Marshal's fees.		
Serving writ, docketing and return,	2	50
Copy of writ,		50
Mileage on writ,	3	75
Summoning witnesses,	13	50
Mileage on subpœna,	16	00
	35	25
	$122	76

Upon which said fi. fa. the marshal made the following return, to wit: 1842, June 6th, received of Jno. P. Caruthers, deputy marshal, thirty-five dollars and 50-100, the amount of William *M.* Beard and John Carruth's cost for attendance as a witness on the within.

W. L. BAIRD,
JOHN CARRUTH.

Received of John P. Caruthers, deputy marshal, nineteen dollars and 30-100, the amount of John Kincaid, attendance fee included in this execution, June 6th, 1842. JOHN KINCAID.

Costs endorsed		$122 76
Marshal's fees—		
Levy, entry, &c.	2 00	
Mileage 3 00, com's 3 45	6 45	
		8 45
		131 21

Satisfied in full.

ALEX. K. McCLUNG,
Mar. nor. dis. Mis.
By JNO. P. CARUTHERS, *Dy.*

Proceedings had by the court in the foregoing cause, at the June term thereof, A. D. 1842, as follows, to wit:

MONDAY, *June the 6th*, 1842.

EBENEZER IRVING et al.,
vs.
MAXWELL WILSON. } 24.

Upon affidavit of defendant, it is ordered by the court, that this cause be continued until the next term thereof.

And afterwards, to wit, on the 9th day of December, 1842, being a day of the December term of said court, the further proceedings were had in the aforesaid cause, to wit:

EBENEZER IRVING and als.,
vs.
MAXWELL WILSON. } 16.

FRIDAY, *December the 9th*, 1842.

This day came the parties, by their attorneys, and thereupon came a jury of good and lawful men, to wit, jury No. 2, being William O. Cook, and eleven others, who being elected, tried, and sworn, well and truly to try the issue joined, upon their oaths do say, that they find the issue in favor of the defendant; it is therefore considered by the court that said defendant go hence, and recover of the plaintiffs the cost in this cause expended.

Plaintiffs' bill of exceptions, to wit:

United States of America, State of Mississippi:

District court of the United States for the northern district of said State, at Pontotoc, December term, 1842.

EBENEZER IRVING, DANIEL LOW, and WALDRON B. POST,
vs.
MAXWELL WILSON.

Be it remembered, that on the 8th day of December, 1842, when this cause came on to be tried before the honorable Samuel J. Gholson, judge of said court, the pleading in the cause having been read to the jury, the counsel for the plaintiffs read to the jury the note sued on in this cause; which is in the words and figures following, to wit:

4,000 dolls. — cts. HERNANDO, *December 7*, 1839.

For value received, I, the subscriber, of the county of Lincoln, and

State of North Carolina, promise to pay E. Irving, Daniel Low, and W. B. Post, or order, four thousand dollars cents, in three months.
Signed, MAXWELL WILSON.

(Endorsed on back.) Hernando, 7th December, 1839; credit the within note by five hundred dollars, $500.
Signed, E. ORNE,
Per HAMMOND WHITNEY.

The defendant then introduced as a witness William L. Beard, who testified that, on the 7th of December, 1839, he was present in the office of Edward Orne, when said Orne, as the agent of the plaintiffs, sold to the defendant a section of land for the sum of $5,000; that much conversation passed between said Orne and the defendant, before they came to an agreement in regard to the kind of funds to be received by said Orne in payment for said land; that the defendant proposed to pay $1,000 in notes of North Carolina banks, and to pay the remaining $4,000 in gold, provided said Orne would allow him for it the current rate of premium (about twenty-five per cent.) which gold then commanded over the ordinary bank note circulation of north Mississippi; that said Orne was unwilling to allow that rate of premium, but said he would receive at par the notes of the good banks of Tennessee and Mississippi, and give the defendant some little time to procure such notes; that the defendant wished said Orne to specify the names of the particular banks whose notes he would agree to receive, and that said Orne named the Hernando Railroad and Banking Company, of which he was the president, and agreed to receive its notes from the defendant; that the defendant thereupon paid said Orne $1,000 in North Carolina money, and the note now sued on was then prepared for the signature of the defendant, who at first refused to sign it, unless said Orne would incorporate in it a stipulation that it might be paid in the notes of the Hernando bank; which said Orne refused to do, saying that he would not make it payable in any kind of bank notes; but one John L. Brown, who had introduced the defendant to said Orne, remarked to the defendant, in Orne's presence, that Orne was an honorable man, and would comply with his promise; and witness also told the defendant he had best sign the note, and defendant did finally sign it as it now stands. And said Orne, as agent for the plaintiffs, then executed to the defendant a title bond, obligating the plaintiffs to make the defendant a good title to the land, upon the payment of said note. That after said note and title bond had been executed and delivered, and when the defendant and witness had risen to depart, witness recollected that the Hernando bank had notes in circulation, not due, called post-notes, which had not been spoken of in the conversation that took place in relation to Hernando money prior to the execution and delivery of the note and title bond; and witness then asked the defendant, if he was aware that the Hernando bank had such notes in circulation; to which the defendant answered that he was; whereupon witness inquired of said Orne whether he (Orne) would receive from the defendant the latest issues of said post-notes; to which Orne replied, "I will receive those issued

as lately as yesterday." And the defendant then said to Orne, that if he did not procure said post-notes, and pay his note with them before its maturity, he would pay it in gold.

The same witness further testified that, afterwards, on the day of the date of the note sued on, the defendant paid thereon, to said Orne, the sum of $500 in the post-notes of the Hernando bank, which was endorsed as a credit upon said note; that said sum of $500, in post-notes, was purchased that day by the defendant in Hernando with gold, at twelve per cent. discount; that the defendant, on his way to Holly Springs, next day, purchased $1,200 more in said post-notes, at twelve and a half per cent. discount, with gold; that the defendant purchased the full amount of $3,500 in said post-notes prior to the 17th of February, 1840, with the exception of $300, which he purchased on the 17th of February, 1840; and that none of said post-notes were purchased by the defendant at less than twenty per cent. discount.

Upon his cross-examination, the witness stated, that the wife of the defendant was his (witness') sister.

The defendant then introduced, as a witness, John Kincaid, who testified, that on the 7th of December, 1839, he went into the office of Edward Orne, in Hernando, where he found the defendant, said Orne, William L. Beard, and some other persons; that he understood, from the conversation that took place after he entered the office, that the defendant had purchased a tract of land from said Orne, and that the writings, in relation to the contract, had been executed and delivered.

Witness further testified, as to the conversation that was had respecting the post notes of the Hernando Bank, substantially to the same effect as the witness Beard had done.

The defendant then introduced, as a witness, John Caruth, who testified, that on the 18th of February, 1840, the defendant tendered to said Orne, in payment of the note sued on, and in the presence of witness, $3,500 in the post notes of the Hernando Railroad and Banking Company, which said Orne refused to receive; that the defendant reminded said Orne that he had promised to receive such notes, even though they were "as green as yesterday," to which Orne replied, "if you had brought them yesterday, I would then have received them, but I will not receive them to-day.

The counsel for the defendant then read as evidence to the jury a certified office copy of a power of attorney, executed by the plaintiffs to Edward Orne, which said certified office copy is in the words and figures following, to wit:

Know all men by these presents, that Daniel Low, widower, Ebenezer Irving, widower, Waldron B. Post and Sarah, his wife, of the city of New York, and State of New York, have made, constituted, and appointed, and by these presents do make, constitute, and appoint, Edward Orne, of the State of Mississippi, (who has been, and now is, acting as agent for the said Daniel Low, Ebenezer Irving, and Waldron B. Post, who are trustees of the New York, Mississippi, and Arkansas Land Company,) true and lawful attorney for the said Low, Irving, and Post, and the wife of said Post; and in their names, place, and

stead, to attend to, take care of, collect, receive, and pay any and all claims and demands arising out of, accruing upon, or incidental to, any and all the lands, tenements, and estate, situated in the States of Mississippi and Tennessee, which have been purchased by the said Edward Orne, entered by him at the land office, or otherwise procured by him in the name of and for the said Low, Irving, and Post, trustees as aforesaid, or any of them, jointly or severally, as joint tenants or otherwise.

And do also give to said attorney full power and authority to offer all the said lands, premises, and real estate, with the privileges and appurtenances, for sale, and to bargain for, sell, dispose of, and convey the same, and any and every part thereof, in the discretion of the said attorney; in such lots, tracts, farms, or parcels as he, the said attorney, may think best for the interests of the present owners thereof; and to give therefor, and for any and every part thereof, deeds in fee, with full covenants and general warranty, and such sales and disposition to be in the discretion of the said attorney, as to price, terms of payment, and securities, in all respects, except that the obligations and securities therefor, or for any thereof, shall be payable to the said Irving, Low, and Post, trustees of the New York, Mississippi, and Arkansas Land Company, and the survivors and survivor of them, their and his heirs, executors, administrators, and assigns.

And the said Daniel Low, Ebenezer Irving, and Waldron B. Post, trustees, do hereby give and grant, unto the said attorney, full power and authority to do and perform all and every act and thing whatsoever, requisite and necessary to be done, in and about the premises, as fully, to all intents and purposes, as they might or could do, if personally present; and do hereby ratify and confirm all that their said attorney shall lawfully do, or cause to be done, by virtue hereof.

In testimony whereof, the said Daniel Low, Ebenezer Irving, and Waldron B. Post, have hereunto set their hands and seals, the thirty-first day of October, A. D. 1838.

DAN'L LOW, [SEAL.]
EBEN'R IRVING, [SEAL.]
W. B. POST, [SEAL.]
SARAH E. POST. [SEAL.]

In presence of—
SAM. R. BETTS.

Copy of probate, taken before Samuel R. Betts, judge of United States district court, New York, southern district, State of New York.

UNITED STATES OF AMERICA, *Southern district of New York:*

Be it remembered, that on this third day of November, A. D. 1838, in the city of New York, in said county, before me, judge of the United States district court, in and for the New York southern district, personally appeared Daniel Low, widower, Ebenezer Irving, widower, Waldron B. Post and Sarah E., his wife, all of New York, in said State of New York, to me known to be the persons by those names described, and who executed the foregoing deed or power of attorney,

and severally acknowledged that they executed the same for the uses and purposes therein mentioned; and the said Sarah E. Post, on a private examination, separate and apart from her husband, acknowledged that she executed the said deed freely, without any fear or compulsion of her said husband.

In witness whereof, I have hereto set my hand, at the city of New York, this the said 3d day of November, A. D. 1838.

SAM'L R. BETTS,
Judge of the district court of New York,
For the southern district thereof.

The State of Mississippi, Marshall county:

I, Gordentia Waite, clerk of the probate court of said county, do hereby certify, that the foregoing is a true and perfect transcript of a power of attorney, and the certificate thereto, from Dan'l Low, Ebnr. Irving, W. B. Post, and Sarah E. Post, to Edward Orne, parties therein named, as fully as the same remains of record in my office.

I further certify, that the said power of attorney was received and recorded in my office, the 29th day of July, 1839.

Given under my hand and the seal of said court, at office, the 27th day of March, 1841.

[L. S.] GORDENTIA WAITE, *Clk.*

The State of Mississippi, Marshall county:

I, Jesse Lewellen, judge of the probate court, in and for said county, do certify, that Gordentia Waite, whose name appears officially signed to the foregoing certificate and attestation, is now, and was at the date thereof, clerk of the probate court, in and for said county, duly commissioned and qualified, and that his certificate and attestation is in due form of law, and by the proper officer.

Given under my hand and seal, December 2d, 1842.

JESSE LEWELLEN. [SEAL.]

The counsel for the plaintiffs then read as evidence to the jury a certified transcript, which was filed in this court, among the papers in this cause, on the 6th of June, 1842, from the records of the district chancery court of the State of Mississippi, at Holly Springs, being a copy of an original bill in equity, filed in said district chancery court, by the defendant against the plaintiffs and Edward Orne; and a copy of a deposition of William L. Beard, taken in said equity suit, which said certified transcript is in the words and figures following, to wit:

To the honorable Robert H. Buckner, chancellor of the State of Mississippi, presiding at Oxford.

The bill of complaint of Maxwell Wilson, of the county of Marshall, and State of Mississippi, respectfully complaining of Ebenezer Irving, Daniel Low, and Waldron B. Post, of the county and State of New York, and of Edward Orne, of the county of Desoto, and State of Mississippi, shows unto your honor, that on or about the 7th day of

December, A. D. 1839, the complainant made an agreement with the said Irving, Low, and Post, through their agent and attorney in fact, Edward Orne, for the purchase of section numbered twenty-three, of township one, and range two west, of the basso meridian, in the Chickasaw cession, in the county of Marshall, and State of Mississippi, for the sum of five thousand dollars, as follows, to wit, the sum of one thousand dollars in the bank paper of the banks of the States of North and South Carolina, to be paid down, and the sum of four thousand dollars of the notes of the current banks of the State of Mississippi, to be designated by said Orne at the time of executing the contract, and to be paid on or before the 7th day of March, 1840. The proposition of complainant to said Orne being this, that said complainant would give for said section of land the sum of five thousand dollars, as follows, to wit, the sum of one thousand dollars in the notes of the current banks of the States of North and South Carolina in hand, and the sum of four thousand dollars, in the notes of the current banks of the State of Mississippi, on or before the 7th March, 1840, without interest; the notes of said banks to be designated by said Orne at the time of executing the contract; or in lieu of the four thousand dollars of the notes of the Mississippi banks, complainant offered to pay down, in gold and silver, the value of said Mississippi bank notes.

Complainant charges, that he himself was a stranger in the State of Mississippi, having arrived in the State from the State of North Carolina but a few weeks before the making of said agreement, and was totally ignorant of the state of the banks and currency of the State of Mississippi. The said Orne then informed complainant, that gold and silver was worth 25 per cent. more than current notes of the banks of the State of Mississippi, and that he was not willing to allow that amount for the gold and silver over the bank notes of the State; but that he would take the said sum of one thousand dollars of the notes of the banks of North and South Carolina, and the sum of four thousand dollars of the notes of the banks of the State of Mississippi; and inasmuch as complainant's funds consisted of the notes of the North and South Carolina banks, and of gold and silver, the said Orne would allow complainant three months to exchange his gold and silver for the notes of banks of Mississippi; and, hereupon, the parties agreed to bargain and sell the same upon the terms aforesaid.

And thereon the complainant paid down the sum of one thousand dollars of the notes of the banks of North and South Carolina, which was really equivalent to gold and silver, and made and executed his note for the sum of four thousand dollars, payable on or before the 7th of March, 1840. And thereon, the said Irving, Low, and Post, through their agent and attorney in fact, said Edward Orne, made and executed their obligation to the complainant, binding themselves to complainant to convey him said section of land, on payment of said note of four thousand dollars, and also such taxes as may be legally assessed on said land, with general warranty title thereto; which bond is herewith filed, and marked (A,) and made part of this bill.

Complainant further charges, that the said Orne, at the time of making said contract, designated the notes of the Hernando Railroad and Banking Company, and no other, as being such notes as come within the said agreement, and such as would be received in the payment and fulfilment of the agreement and contract aforesaid.

Complainant further charges, that he would by no means have made or entered into said contract, without the provision aforesaid, in regard to the said sum of four thousand dollars, and so explicitly declared and expressed himself to said Orne, when making said agreement, and that the same entered into and made a part of the said contract, and the consideration thereof.

Complainant further charges, that on the day said agreement was made, he paid the said Orne the further sum of five hundred dollars of the notes of the Hernando Railroad and Banking Company, in part of said four thousand dollars, in pursuance of said agreement, which is credited on said note.

Complainant charges, that said Orne was president of the said Hernando Railroad and Banking Company, and was well advised of its condition and credit, and declared to complainant that the same was a good, sound, and solvent institution, and in good credit; and complainant informed said Orne that he was an entire stranger, and knew nothing of the banks of this State, and such being the fact, was the reason why he required said Orne particularly to specify the banks, the notes of which would be received in satisfaction of said agreement, and why the same was made part of the contract.

Complainant expressly charges, that the said Orne, with a fraudulent intent, and for the purpose of deceiving and defrauding complainant, failed to insert, in the face of said note, the kind of currency in which said note of four thousand dollars should be paid, according to contract; upon being questioned in regard thereto, said Orne assured complainant that the same would make no difference, but that the currency aforesaid would most certainly be taken in discharge of said note, in accordance with the said agreement—the whole of the said writing being drawn up by said Orne, or under his direction.

Complainant further charges, that he is advised and believes, that said Orne was fully authorized and legally empowered to make the contract aforesaid, in behalf of said Irving, Low, and Post, and to make titles in their behalf, and to receive moneys for them, and has from thence, hitherto, and still is.

Complainant *complainant* further charges, that on or about the 18th day of February, 1840, he tendered to said Orne the sum of three thousand five hundred dollars of the notes of the Hernando Railroad and Banking Company, and demanded of said Orne to deliver to him his said note, and to make to him the title to said section of land, according to agreement, which said Orne refused to do, falsely, fraudulently, and dishonestly insisting, that he did not agree to take said bank notes at the end of three months.

Complainant charges, that by reason of said agreement, and the as-

surances of said Orne, he had put himself to great trouble and expense to get the money for said Orne and his principals, according to said agreement; and that since that time said bank has failed, and the said sum of money is now worthless, or nearly so, and will be lost to complainant, unless defendants are compelled to comply with their agreement.

Complainant further charges, that he took possession of said land immediately after said contract, and still is in possession thereof, and has made large and valuable improvements on said land.

Complainant herewith files a schedule of the notes tendered, which is herewith filed, and made part of this bill, and marked (B,) and the notes themselves will be produced as the court may direct.

Complainant charges that, in obtaining said money, after putting himself to great trouble, he was not able to realize as much as 20 per centum upon his gold and silver, the notes of said bank being at that time good and receivable in the branch of the Mississippi Union Bank at Ripley.

Complainant charges, that he is advised, and believes, that said Irving, Low & Post are trustees for a company of land speculators, who are unknown to complainants, and that some of said persons are married and have wives, being and entitled to dower, under the laws of this State, and that the said title is in other respects defective.

Complainant charges expressly, that the whole of the principals of said Orne are strangers to him, (complainant;) that he has never seen them, but that the whole of said business was transacted with Orne.

He further charges, that he has required said Orne to do him justice in the premises, which he (Orne) has wholly refused to do; all which is contrary to equity and good conscience, and tends to the injury of complainant. And forasmuch as complainant is without relief, by the rules of common law, and is only relievable in a court of chancery, where matters of the sort are more properly cognizable; to the end, therefore, that justice may be done complainant in the premises, he prays that said Irving, Low, Post & Orne be made defendants to this bill, with fit and proper words to charge them; that they and each of them be required, upon oath, full, true, and perfect answers to make to all and singular the allegations and charges contained in this bill, in as full and perfect a manner as if the same were here again repeated in the form of interrogatories, and they thereto particularly interrogated; and more particularly that said Orne shall answer and say whether the contract for the sale of said land between complainant and Orne, attorney in fact, did not agree to take the $4,000 of the notes of the banks of Mississippi; and whether said Orne did or did not designate notes of the Hernando Railroad & Banking Company as being such as came within the agreement, and them only? Whether complainant did not inform said Orne that he had the gold and silver ready at hand, and *wanted no* credit; and that the reason for postponing the payment of the $4,000 without interest was solely for the purpose of changing the gold and silver into the Hernando bank notes?

Complainant prays, that, on the hearing, the defendants be compelled to exhibit and show their title to said land; and that they be restrained from selling, disposing of, or bringing suit upon said note; and that they be compelled to receive the residue of $3,500, the balance of said note, in the Hernando money; and that they be compelled to convey to complainant a good and sufficient title to said land; and that the said title may be seen and adjudged upon by the court; and that finally they be compelled to deliver up said note, and receive said Hernando money, and such other and further relief as to the court may appear to be right; and complainant, as in duty bound, will ever pray, &c.

DAVIS, TOLTEN & GREEN, *Atto'ys.*

State of Mississippi, Marshal county:

This 4th day of Sept., 1840, personally appeared before me, Frederick W. Huling, circuit judge, &c., Maxwell Wilson, and made oath, that the several facts stated in this bill, stated as of his own knowledge, are true, and those stated from information he believes true.

MAXWELL WILSON.

Sworn to and subscribed before me, date above.

F. W. HULING, *Circuit Judge.*

State of Mississippi, to the clerk of the circuit court for Marshal county.

Upon complainant entering into bond, with William Means as his security, in the penal sum of $7,000 00, conditioned, &c., you will issue spas. and injunction, directed, commanding, restraining, &c., as prayed for in this bill.

Witness my hand and seal, this 4th September, 1840.

F. W. HULING, [SEAL.]
Circuit judge 8th district.

Exhibit A.

Know all men by these presents, that we, Ebenezer Irving, Daniel Low, and Waldron B. Post, of the county of New York, State of New York, trustees, are holden, and stand firmly bound and obliged, unto Maxwell Wilson, of the county of Lincoln, and State of North Carolina, in the full and just sum of ten thousand dollars, to be paid unto the said Maxwell Wilson, his executors, administrators, or assigns; to the which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, firmly by these presents.

Witness our hands and seals, dated the seventh day of December, A. D. eighteen hundred and thirty-nine.

The condition of the above obligation is such, that whereas the said Ebenezer Irving, Daniel Low, and Waldron B. Post, trustees, have agreed, for the consideration hereinafter mentioned, to sell to the above named Maxwell Wilson, his heirs and assigns, a certain section of land, known as section numbered twenty-three, of township one, and range two west, of basso meridian Chickasaw cession; and, in consideration

thereof, the said Maxwell Wilson has this day paid to the said Ebenezer Irving, Daniel Low, and Waldron B. Post, trustees as aforesaid, the sum of one thousand dollars, in money, and made and delivered to said trustees certain obligations, bearing even date herewith, to wit: An agreement that the said Maxwell Wilson shall pay, when due, all taxes, legally assessed on said land, and promissory notes, for the sum of four thousand dollars, payable to said trustees, their representatives, or assigns, in manner following, viz: One note, for the sum of four thousand dollars, due and payable on or before the seventh day of March, 1840. Now, if Ebenezer Irving, Daniel Low, and Waldron B. Post, when the said Maxwell Wilson shall have faithfully observed, kept, and performed his said several obligations, according to their tenor and effect, and shall have produced and surrendered to the said trustees, or either of them, the said obligations, (for the payment of said sums of money,) discharged at or before the time when the last payment to be made thereon shall become due; and upon the surrender to them, or either of them, of this instrument, their heirs or representatives, shall convey the said lands to the said Maxwell Wilson, his heirs, executors, or administrators, in fee simple, which they, the said trustees, and their respective heirs, executors, and representatives, shall warrant and defend against the lawful claims of all claimants whatsoever, then this obligation shall be void; otherwise, shall be and remain in full force and virtue.

EBENEZER IRVING, [SEAL.]
DANIEL LOW, [SEAL.]
WALDRON B. POST. [SEAL.]
By EDWARD ORNE, *Att'y in fact.*

Signed, sealed, and delivered in presence of—
HAMMOND WHITNEY.

Exhibit (*B.*)

Statement of the notes of the Hernando Railroad and Banking Company, presented and tendered by Maxwell Wilson to Edward Orne, attorney in fact for Irving, Low & Post.

108	notes of	$20	each, 6 ms.	- - - -	$2,160
14	"	20	" 8 ms.	- - - -	280
59	"	10	" 6 ms.	- - - -	590
8	"	10	" 8 ms.	- - - -	80
75	"	5	" 6 ms.	- - - -	375
3	"	5	" 8 ms.	- - - -	15
					$3,500

Int. on the above notes, $90.62½.

Deposition of William L. Baird.

The State of Mississippi, Marshal county:

In pursuance of the annexed commission, to me directed from the superior court of chancery for the State aforesaid, I have caused Wil-

liam L. Baird and John Carruth to come before me, Wm. Rogan, one of the justices of the peace for the State and county aforesaid, at the office of Tolton & Greer, in the town of Holly Springs, on the 17th day of March, 1841, and examined them upon oath, in due form of law, touching a certain matter of controversy now pending in said court, at Oxford, in which said Maxwell Wilson is complainant, and Edward Orne, Ebenezer Irving, *David Lowe*, and Waldron B. Post are defendants, the said complainant being present in person, and Alexander M. Clayton, attorney for defendants, being also present.

Question first, by complainant, to Wm. L. Baird: Were you not present with Maxwell Wilson, the complainant, and Edward Orne, and others, at the time said complainant was bargaining with said Orne, agent and attorney in fact for said Orne's co-defendants, for section No. 23, in township No. 1, of range No. 2 west, of the basis meridian, in the Chickasaw cession? If so, state when and where the same took place, and who was present.

I was present during the whole time Maxwell Wilson and Edward Orne *was* bargaining for section 23, town. 1, range 2 west; it was at the office of *said* Orne, in the town of Hernando; J. L. Brown, John Kincaid, Mr. Whitney, Mr. Williams, and Orne, overseer, *was* present a part of the time, but not there when the contract was made; it was on or about the 7th day of December, 1839.

Question 2, by same, to said Baird: Relate, if you can, what contract or agreement was made by the parties in relation to said section of land, and the conversation leading thereto, and the acts of said parties.

Col. J. L. Brown accompanied said Wilson, J. Kincaid, and myself, to Orne's office, and introduced us to Orne; Wilson then told Orne he had been *losing* looking at some of his land, and wished to purchase section 23, town. 1, range 2 west; asked Orne his price; Orne replied, eight dollars and fifty cents per acre, on time, and in payments; Wilson said he did not want time, he had funds enough to pay for it; Orne then said he would take eight dollars per acre in prompt payment; Wilson then said he would make him an offer—he would give him five thousand dollars; pay him one thousand dollars in Carolina money, and the balance in gold, if Orne would allow him a liberal premium on the gold; or he would pay the balance in Mississippi or Tennessee bank notes, if Orne would give him time to change his gold for that kind of money; Orne then said he could not allow him the premium gold was commanding over this kind of bank notes, but would take his offer of one thousand dollars in Carolina notes, and the balance, as he proposed, in Mississippi or Tennessee; some conversation then took place in regard to the time required to make the exchange, and I think three months was agreed on; Wilson then asked Orne what kind of money he would take; Orne said, Hernando money, or Hernando *and* Railroad Banking Co.; Wilson observed to Orne that he was a stranger in the country, and knew nothing of the solvency of any of the banks, and would buy no more money than would meet his contract; Wilson

then laid down his money, and I counted to Orne one thousand dollars in Carolina money; Mr. Whitney was then called in, and filled a note for Wilson to sign, and a title bond; Wilson then read the note, and refused to sign it, because it did not read payable in Hernando money; Orne said he would not insert any kind of money—not even United States money—but would receive the Hernando notes, that he believed it to be as safe, or better, than any other Mississippi or Tennessee money; about this time J. L. Brown returned to the office, and hearing Wilson object to sign the note, and his reason for refusing, said, in Orne's presence, that Orne was an honorable man, and would comply with his promise; I then observed to Wilson he had best sign it, and he finally did so, and received the bond for a title; said Orne was acting as agent for his co-defendants.

Question 3rd, to same witness: Did you hear any further agreement, after signing the papers, between the parties? If so, state the whole of it, and more particularly in relation to the kind of currency to be received by said Orne, agent and attorney in fact for his co-defendants, for complainant, in payment of the balance of the price of said land.

After the paper was changed and delivered, I enquired of Wilson, in Orne's presence, if he was aware that the Hernando bank had issues called post notes; he said he was; one of us then asked Orne how late issues he would receive; he replied, as late as yesterday.

4, to same witness: Was any money paid said Orne, by said Maxwell Wilson, after said agreement? If so, state the amount, and the kind of money, and the time when payment was made.

After Wilson had signed the note, we met Col. J. L. Brown in the street. Brown and Kincaid had been trying to exchange some gold for Hernando notes. Brown said to Wilson he would furnish him with five hundred dollars in Hernando money, and would receive his gold, or would carry it to Pontotoc, and change it for him. We then returned to Orne's office, and Wilson paid to Orne five hundred dollars in notes on the Hernando Railroad and Banking Co., of the late issues called post notes. The said money was paid on the same day the note was given, and a credit entered on the note.

5th, to same witness: Did or did not the promise of Orne, to receive Hernando bank notes, form part of the inducement and consideration to said Wilson in making said contract?

It certainly did; for, when Orne said he would receive Hernando money, Wilson enquired of me whether he would be at much inconvenience to procure that kind of money. I said no; that he could procure that am't, and advised him to promise it in Hernando money.

6th, to same witness: How long had said Wilson been in the country, and from whence did he come?

Maxwell Wilson came to my house, with his family, in the latter part of November, 1839; came directly from Lincoln county, No. Ca.

7th, to same witness: By whom was the contract reduced to writing, and under whose directions? State everything you may know in rela-

tion to said transaction; and also who was president of the Hernando Railroad & Banking Company at that time?

Ans. By a young man I was told was Orne's clerk, by the name of Whitney, and by Orne's directions. Edward Orne was president of the Hernando & Railroad Bank at that time. The whole of the above testimony was objected to, by the attorney of the defendants, upon the ground that it was parol evidence, offered to explain and vary the agreement in writing named in the bill; and the question as to the admissibility and competency of said evidence was, by the commissioner, referred to the hon'ble chancery court for its decision.

Cross-interrogatories propounded to Wm. L. Baird by the attorney of the defendants:

1st. Are you a friend and relation of the complainant; and how long have you resided in this State, and at what distance from Hernando?

Ans. Mrs. Wilson, the wife of Maxwell Wilson, is my sister. I removed to the State of Mississippi in the fall of 1836; reside about forty-five miles from Hernando.

2, by same. Was or was not Mr. Whitney, to whom you refer as the clerk of Mr. Orne, present during the whole time you were in Mr. Orne's office engaged in making the trade above spoken of?

I am of the opinion he was not.

By same. Was any one present during the whole time?

I believe there was no person present during the whole time but myself.

Question 4, by same. When Mr. Orne refused to insert in the note that it was payable in Hernando money, did he or not assign as his reason therefor that he did not know what kind of bank notes would be good at the time the note of Wilson would fall due, and did he not state that he would be willing to take any bank notes that were as good as Hernando notes then were, but would not be bound to take the notes of any named bank?

If Mr. Orne *assign* any such reason I do not remember it; do not think he did. He first agreed to receive any notes on any of the sound banks *or* Mississippi or Tennessee; but, before the contract was closed, he made choice of the notes on the Hernando bank.

And further this deponent saith not.

W. L. BAIRD.

The State of Mississippi, Marshall county:

I, William Ragan, justice of the peace of Marshall county, in the State aforesaid, do hereby certify, that on the 17th day of March, 1841, at the office of Tolton & Greer, in the town of Holly Springs, W. L. Baird and John Carruth then and there appeared before me, when and where I then took the foregoing deposition of the said Baird & Carruth, they first being duly sworn on the holy evangelist of Almighty God.

I further certify, that the deposition of W. L. Baird was written by

him in my presence, and he then signed the same, after carefully reading over the said deposition.

The foregoing deposition of John Carruth was written by me, as directed by him; and after the same was written, and after he had carefully read over the same, he then signed the same.

I do further certify, that the foregoing deposition has not been out of my possession since the taking of the same, until the closing up thereof; neither have they been altered or defaced in any way whatever.

Given under my hand and seal, this 17th day of April, 1841.

WILLIAM RAGAN, [SEAL.]
Justice of the peace.

The State of Mississippi:

I, James C. Alderson, clerk of the district chancery court of the State of Mississippi, do hereby certify, that the foregoing fourteen pages contain a true and perfect transcript of the bill of complaint of Maxwell Wilson, against Edward Orne, Ebenezer Irving, Daniel Low, and Waldron B. Post; and of the deposition of William L. Baird, a witness in said cause, filed in the said court, and now remaining in my office.

Given under my hand and private seal, (there being no seal of said court provided,) at office, May 31st, 1842.

[L. S.] JAMES C. ALDERSON, *Clerk.*

I, Joseph W. Chalmers, vice chancellor of the State of Mississippi, presiding in the district chancery court at Holly Springs, hereby certify, that James C. Alderson, whose certificate and attestation appear above, was, at the time of signing the same, clerk of said district chancery court, and that his said attestation is in due form of law.

Given under my hand and seal, at Holly Springs, May 31st, 1842.

JOS. W. CHALMERS. [SEAL.]

The counsel for the defendant then proposed to read to the jury, as evidence in this cause, another transcript, which was filed in this court, among the papers in this cause on the 6th of December, 1842, from the record of the said district chancery court at Holly Springs, being another copy of the same original bill in equity, a copy whereof is set forth in the before mentioned transcript; and a copy of an amended bill in equity, filed in said district chancery court, in the equity suit aforesaid, on the 6th of July, 1842, by the defendant, against the plaintiffs and Edward Orne, which said last mentioned transcript is in the words and figures following, to wit:

To the honorable Robert H. Buckner, chancellor of the State of Mississippi, presiding at Oxford.

The bill of complaint of Maxwell Wilson, of the county of Marshall, and State of Mississippi, respectfully complaining of Ebenezer Irving, Daniel Low, and Waldron B. Post, of the county and State of New York, and of Edward Orne, of the county of Desoto, and State of Mississippi, shows unto your honor: That on or about the 7th day of December, A. D. 1839, the complainant made an agreement with the

said Irving, Low, and Post, through their agent and attorney in fact Edward Orne, for the purchase of section number twenty-three, of township one, and range two west, of the basis meridian, in the Chickasaw cession, in the county of Marshall, and State of Mississippi, for the sum of five thousand dollars, as follows, to wit: the sum of one thousand dollars, in the bank paper of the Bank of the State of North Carolina and South, to be paid down, and the sum of four thousand dollars, of the notes of the current banks of the State of Mississippi, to to be discharged by said Orne at the time of executing the contract, and to be paid on or before the 7th day of March, 1840. The proposition of complainant to the said Orne being this: that said complainant would give, for said section of land the sum of five thousand dollars, as follows, to wit: the sum of one thousand dollars, in the notes of the current banks of the States of North and South Carolina, in hand, and the sum of four thousand, of the notes of the current banks of the State of Mississippi, on or before the 7th of March, 1840, without interest; the notes of said banks to be designated by said Orne, at the time of executing the contract; or in lieu of the four thousand dollars of the notes of the Mississippi banks, complainant offered to pay down, in gold and silver, to the value of said Mississippi bank notes. Complainant charges, that he himself was a stranger in the State of Mississippi, having arrived in this State, from the State of North Carolina, but a few weeks before the making of said agreement, and was totally ignorant of the state of the banks and currency of the State of Mississippi. The said Orne then informed complainant that gold and silver was worth 25 per centum more than current notes of the banks of the State of Mississippi, and that he was not willing to allow that amount for the gold and silver on the bank notes of the State, but that he would take the said sum of one thousand dollars of the notes of the banks of North and South Carolina, the sum of four thousand dollars of the notes of the banks of the State of Mississippi; and, inasmuch as complainant's funds consisted of the notes of North and South Carolina banks, and of gold and silver, the said Orne would allow complainant three months to exchange his gold and silver for the notes of the banks of Mississippi; and hereupon the parties agreed to bargain and sell the same upon the terms aforesaid; and thereon the complainant paid down the sum of one thousand dollars of the notes of the banks of North and South Carolina, which was nearly equivalent to gold and silver, and made and executed his note for the sum of four thousand dollars, payable on or before the 7th of March, 1840; and thereon the said Irving, Low, and Post, through their agent and attorney in fact, said Edward Orne, made and executed their obligation to the complainant, binding themselves to complainant to convey him said section of land on payment of said note of four thousand dollars, and all such taxes as may be legally assessed on said land, with general warranty title thereto, which bond is herewith filed and marked (A,) and prayed part of this bill. Complainant further charges, that the said Orne, at the time of making said contract, designated the notes of the Hernando Railroad and Banking

Company, and no other, as being such notes as came within the said agreement, and such as would be received in the payment and fulfilment of the agreement and contract aforesaid. Complainant further charges, that he would by no means have made and entered into said contract without the provisions aforesaid in regard to the said sum of four thousand dollars, and so explicitly declared and expressed himself to said Orne when making said agreement, and that the same entered into and made part of the said contract, and the consideration thereof. Complainant further charges, that on the day said agreement was made, he paid the said Orne the further sum of five hundred dollars of the *note* of the Hernando and Railroad Banking Company, in part of said four thousand dollars, in pursuance of said agreement, which is credited on said note. Complainant charges, that said Orne was President of the said Hernando Railroad and Banking Company, and was well advised of its condition and credit, and declared to complainant that the same was a good, sound, and solvent institution, and in good credit; and complainant informed said Orne that he was an entire stranger, and knew nothing of the banks of this State, and such being the fact was the reason why he required said Orne particularly to specify the banks the notes of which would be received in satisfaction of said agreement, and why the same was made part of the contract. Complainant expressly charges, that the said Orne, with a fraudulent intent, and for the purpose of deceiving and defrauding complainant, failed to insert in the face of said note the kind of currency in which said note of four thousand dollars should be paid, according to contract. Upon being questioned in regard thereto, said Orne assured complainant the same would make no difference; but that the currency aforesaid would not certainly be taken in discharge of said note, in accordance with said agreement, the whole of the said writing being drawn up by the said Orne, or under his direction. Complainant further charges, that he is advised and believes that said Orne was fully authorized and legally empowered to make the contract aforesaid, in behalf of said Irving, Low, and Post, and to make titles in their behalf, and to receive moneys for them; and has from thence hitherto, and still is. Complainant further charges, that on or about the 18th day of February, 1840, he tendered to said Orne the sum of three thousand five hundred dollars of the notes of the Hernando Railroad and Banking Company, and demanded of said Orne to deliver to him his said note, and to make to him the title to said section of land, according to agreement, which said Orne refused to do, falsely, fraudulently, and dishonestly insisting that he did not agree to take said bank notes at the end of three months. Complainant charges, that by reason of said agreement, and the assurances of said Orne, he had put himself to great trouble and expense to get the money for said Orne and his principals, according to said agreement, and that since that time said bank has failed, and the said sum of money is now worthless, or nearly so, and will be lost to the complainant, unless defendants are compelled to comply with their agreement.

Complainant further charges, that he took possession of said land immediately after said contract, and still is in possession thereof, and has made a large and valuable improvement on said land. Complainant herewith files a schedule of the notes tendered, which is herewith filed and made part of this bill, and marked B, and the notes themselves will be produced as the court may direct. Complainant charges, that in allowing said money, after putting himself to great trouble, he was not able to realize as much as 20 per cent. upon his gold and silver, the notes of said bank being at that time good, and receivable in the branch of the Mississippi Union Bank, at Ripley. Complainant charges, that he is advised and believes that said Irving, Low, and Post, are trustees for a company of land speculators who are unknown to complainants, and that some of said persons are married, and have wives living, and entitled to dower under the laws of this State, and that said title is in other respects defective. Complainant charges expressly, that the whole of the principals of said Orne are strangers to him, (complainant,) that he has never seen them, but that the whole of said business was transacted with Orne. He further charges, that he has required said Orne to do him justice in the premises, which he, (Orne,) has wholly refused to do; all which is contrary to equity and good conscience, and tends to the injury of complainant. And forasmuch as complainant is without relief by the rules of common law, and is only relievable in a court of chancery, where matters of the sort are more properly cognizable; to the end, therefore, that justice may be done complainant in the premises, he prays that said Irving, Low, Post, and Orne, be made defendants to this bill, with fit and proper words to charge them, that they and each of them be required, upon oath, full, true, and perfect answers to make, to *and* all *and* singular the allegations and charges contained in this bill, in as full and ample a manner as if the same were here again repeated in the form of interrogatories, and they thereto particularly interrogated; and more particularly, the said Orne shall answer and say, whether the contract for the sale of said land between complainant and Orne, attorney in fact, did not agree to take the $4,000 of the notes of the banks of Mississippi, and whether the said Orne did or did not designate the notes of the Hernando Railroad and Banking Company, as being such as came within the agreement, and them only. Whether complainant did not inform the said Orne that he had the gold and silver ready at home, and wanted no credit, and that the reason for *posting* the payment of the $4,000, without interest, was only for the purpose of changing the gold and silver into the Hernando bank notes. Complainant prays, that on the hearing, the defendants be compelled to exhibit and show their title to said land, and that they be restrained from selling, disposing of, or bringing suit upon said note, and that they be compelled to receive the residue of $3,500, the balance of said note in the Hernando money, and that they be compelled to convey to complainant a good and sufficient title to said land, and that the said title may be seen and adjudged upon by the court; and that, finally, they be compelled to deliver up said note, and receive said Hernando money,

and such other and further relief as to the court may appear to be right; and complainant, as in duty bound, will ever pray, &c.

DAVIS, TOLTEN, AND GREEN, *Atty's.*

STATE OF MISSISSIPPI, *Marshall county:*

This 4th day of September, 1840, personally appeared before me, Frederick W. Huling, circuit judge, &c., Maxwell Wilson, and made oath, that the several facts stated in the bill, stated of his own knowledge, are true, and those stated from information, he believes true.

MAXWELL WILSON.

Sworn to and subscribed before me, date above—

F. M. HULING, *Circuit Judge.*

STATE OF MISSISSIPPI:

To the clerk of the circuit court for Marshall county:

Upon complainant entering *entering* into bond, with William Means as his security, in the penal sum of $7,000 00, conditioned, &c., you will issue spa. and injunction, directed, commanding, restraining, &c , as prayed for in this bill.

Witness my hand and seal this 4th September, 1840.

F. W. HULING, [L. S.]
Circuit Judge, 8 district.

Exhibit A.

Know all men by these presents, that we, Ebenezer Irving, Daniel Low, and Waldron B. Post, of the city of New York, State of New York, trustees, are held, and stand firmly bound and obliged unto Maxwell Wilson, of the county of Lincoln, and State of North Carolina, in the full and just sum of ten thousand dollars, to be paid unto the said Maxwell Wilson, his executors, administrators, or assigns; to the which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, firmly by these presents.

Witness our hands and seals, dated the 17th day of December, A. D. eighteen hundred and thirty-nine.

The condition of the above obligation is such, that whereas the said Ebenezer Irving, Daniel Low, and Waldron B. Post, trustees, have agreed, for the consideration hereinafter mentioned, to sell to the above named Maxwell Wilson, his heirs and assigns, a certain section of land, numbered twenty-three, of township one, and range two west, of basis meridian, Chickasaw cession; and in consideration thereof, the said Maxwell Wilson has this day paid to the said Ebenezer Irving, Daniel Low, and Waldron B. Post, trustees as aforesaid, the sum of one thousand dollars in money, and made and delivered to said trustee certain obligations, bearing even date herewith, to wit, an agreement that the said Maxwell Wilson shall pay, when due, all taxes legally assessed on said lands, and promissory notes for the sum of four thousand dollars payable to said trustees, their representatives or assigns, in manner following, to wit: One note for the sum of four thousand dollars,

due and payable on or before the seventh day of March, 1840. Now, if Ebenezer Irving, Daniel Low, and Waldron B. Post, when the said Maxwell Wilson shall have faithfully observed, kept, and performed his said several obligations according to their tenor and effect, and shall have produced and surrendered to the said trustees, or either of them, the said obligations for the payment of said sums of money, discharged at or before, when the last payment to be made thereon shall become due, and upon the surrender of them, or either of them, of this instrument, their heirs or representatives, shall convey the said land to the said Maxwell Wilson, his heirs, executors, or administrators, in fee simple, which they, the said trustees, and their respective heirs, executors and administrators, shall warrant and defend against the lawful claims of all claimants whatsoever, then this obligation shall be void; otherwise, shall be and remain in full force and virtue.

EBENEZER IRVING, [SEAL.]
DANIEL LOW, [SEAL.]
WALDRON B. POST. [SEAL.]

By EDWARD ORNE, Atto. in fact. [SEAL.]

Signed, sealed, and delivered in presence of—
HAMMOND WHITNEY.

Exhibit B.

Statement of the notes of the Hernando Railroad and Banking Company, presented and tendered by Maxwell Wilson, to Edward Orne, attorney in fact for Irving, Low and Post.

108	notes of	$20	each,	6 ms.	$2,160
14	"	20	each,	8 ms.	280
59	"	10	"	6 ms.	590
8	"	10	"	8 ms.	80
75	"	5	"	6 ms.	375
3	"	5	"	8 ms.	15
					$3,500

Interest on the above notes, - - - $90.62

Filed, and process issued same day, September 4th, 1840.
A. T. CARUTHERS, *Clerk*.

Filed Oct. 19th, 1840.

DIXON.

Wednesday, July 6, 1842.

The vice chancellor being incompetent to sit in this cause, the parties, by their counsel, selected Alexander B. Lane, a member of the bar in attendance on the court to hear the application now made by complainant for him to file an amended bill; thereupon the vice chancellor retired for the time from the bench, and the said Alexander B. Lane took his place; and thereupon the said application being heard,

and fully considered, it is ordered that the complainant have leave to file an amended bill, and that the complainant pay all the cost of this suit, except the costs of issuing and serving process; the amendment being filed, on motion, it is ordered, that defendants have till next term to answer.

Amended bill.

To the honorable Joseph W. Chalmers, vice chancellor of the State of Mississippi, presiding at Holly Springs.

The amended bill of complaint of Maxwell Wilson, of the county of Marshall and State of Mississippi, in the cause of complainant against Ebenezer Irving, Daniel Low, Waldron B. Post, and Edward Orne, in addition to the charges set forth in his original bill of complaint, represent unto your honor that said Edward Orne, after the making and entering into the contract set forth in the said bill of complaint, and after the execution and delivery of the papers mentioned and set forth in the said bill, as the agent and attorney in fact of the said Irving, Low and Post, contracted, promised, and agreed, to and with complainant, that he would receive in discharge and payment of said note, in the bill mentioned, the post notes of the Hernando Railroad and Banking Company; and that, in pursuance of said agreement, your orator did tender to said Orne the post notes of the Hernando Railroad and Banking Company to the amount of said note in said bill mentioned, with the exception of five hundred dollars in the post notes of said banking company, which he, in a short time after said agreement, tendered to the said Orne, and which were by him received as part payment on said note, and credited thereon; said defendant Orne was duly served with process; and his co-defendants adopted his said answer, and answered his original bill, to which said bill this amended bill is prayed to be taken as part thereof; and that said defendants be required to answer the facts herein and above set forth upon their oaths, respectfully, in as full and ample a manner as if they were thereto directly interrogated.

TOLTEN & BARTON,
Counsellors for Complainants.

This day personally appeared before me, James C. Alderson, commissioner in chancery, the above named complainant, Maxwell Wilson, who, being duly sworn, deposeth and saith, that the facts set forth in this amended bill of complaint are true in substance and fact.

MAXWELL WILSON.

July 5th, 1842.
Sworn to and subscribed, before me,

J. C. ALDERSON, *Clerk.*

Filed July 6, 1842.

J. C. ALDERSON, *Clerk.*

I, James C. Alderson, clerk of the district chancery court, of the State of Mississippi, at Holly Springs, hereby certify, that the foregoing

eleven pages contain true copies of the bill of complaint of Maxwell Wilson, complainant, against Ebenezer Irving, and others, defendants, filed in said court, of the order of said court allowing the complainant to file an amended bill, and of the said amended bill, taken from the originals now on file and of record in my office.

Given under my hand and private seal, there being no seal of said court provided at office, December 3d, 1842.

[L. S.]

JAMES C. ALDERSON, *Clerk*.

The State of Mississippi, Marshall county.

I, Jos. W. Chalmers, vice chancellor of the State of Mississippi, certify, that the above named James C. Alderson is clerk of the district chancery court of the State of Mississippi, at Holly Springs; and that his official acts as such are entitled to full faith and credit.

Given under my hand and seal, this 3d December, 1842.

JAS. W. CHALMERS. [SEAL.]

The foregoing bill is endorsed as follows, to wit:

EBENEZER IRVING, and others,
vs.
MAXWELL WILSON.

The plaintiffs object to the reading, as evidence, of so much of the within transcript as is contained on the 10th and 11th pages, on the ground that the transcript filed by plaintiffs, on the 6th June, 1842, contains a copy of the whole record then existing in that cause; that said 10th and 11th pages contain an amended bill filed in chancery, by defendant Wilson, since plaintiffs obtained a transcript of the record, and because the defendant has no right to make his own statement evidence in this suit.

A. M. CLAYTON, *for Pl'ffs.*

Dec. 7, 1842.

And the plaintiffs, by their counsel, objected to the reading to the jury, as evidence in this cause, of so much of the said last mentioned transcript as exhibits and sets forth a copy of the amended bill in equity filed by the defendant, in said district chancery court, on the 6th of July, 1842; but said objection was overruled by the court, and the said copy of said amended bill was permitted by the court to be read to the jury as evidence in this cause; to which said decision of the court overruling said objection, and allowing said copy of said amended bill to be read as aforesaid, the plaintiffs, by their counsel, excepted at the time.

The plaintiffs then introduced as a witness Edward Orne, who testified that, on the 7th of December, 1839, the defendant was introduced to him by one John L. Brown, as a gentleman who wished to purchase land; that the defendant inquired of witness the price of a particular section of land belonging to the plaintiffs, whose agent the witness was; that witness replied $\$8,\frac{50}{100}$ per acre, payable one-third in cash, and the balance in one and two years, with interest; that the defendant then stated that he had the money ready to pay for the land,

and did not wish to purchase on a credit; to which witness replied, that he would take $5,000 in cash for the land named; that the defendant then said he would take the land at that price, and pay $1,000 in North Carolina money, at par, and $4,000 in gold, if witness would allow him for it the current rate of premium, and inquire of witness what that rate then was; that witness told the defendant he had understood that specie was selling at Pontotoc for about 25 per cent. premium over the ordinary paper circulation; and that he (witness) could not afford to allow so high a rate of premium; but that he would receive at par the notes of such of the banks of Tennessee and Mississippi as were in good standing; that defendant then inquired of some of the persons present whether he could exchange his gold for such bank notes, without much difficulty, at a premium; and upon being informed that he could in some short time, the defendant said he would pay down $1,000 in North Carolina money, and execute his note for $4,000, payable in three months, within which period he was told, by some person present, that he would be able to procure such bank notes as had been mentioned; that the defendant then wished witness to name the banks whose notes he would agree to take in payment of the note for $4,000; and witness then named several banks whose notes he said he was then receiving in payment for lands; among others, the Hernando Bank was named; and witness said he would agree to receive the notes of any of the banks then named, so long as they continued in good credit; that the defendant then paid $1,000 in North Carolina money, and the note sued on was filled up and presented to him for his signature; but the defendant at first refused to sign it, because it was not made payable in Hernando money; that witness thereupon told the defendant he would not make the note payable in the notes of any bank that could be named—not even in United States Bank notes, which were then considered the best in the country—because he did not know how long any of the banks might continue solvent; that he was then receiving the notes of the Hernando bank, and had no reason to suppose that he would not receive them when the defendant's note would become due, but that he would not agree beforehand to receive them, or the notes of any other banks at the end of three months from that time; that John L. Brown said to defendant, before he signed the note in the presence of witness, that witness would do what was right about receiving Hernando money, which witness did not contradict; and that the defendant, after some hesitation, signed the note sued on as it now stands; and witness then executed to the defendant a title bond for the section of land purchased.

Upon his cross-examination the witness stated, that he had no recollection of having made any contract with the defendant either before or after the execution of the note sued on, by which he bound himself absolutely to receive the notes of the Hernando bank in payment of said note, except that, before the note was executed, he agreed that he would receive the notes of any of the banks of Tennessee or Mississippi that should be good when offered to him in payment; that after the note was executed, something was said about the post notes of the Hernando

Bank, which were then mentioned for the first time, but witness did not recollect precisely what was said about them; he made no difference between the post notes of the Hernando bank and the notes that were due; and regarded the conversation that took place after the execution and delivery of the note and title bond, as referring to, and explanatory of, what had been said before the execution of the papers, and not as a new contract, and he never intended to bind himself to receive Hernando or any other bank notes, at all events at any subsequent day. Here there was shown to the witness a newspaper, dated December 7th, 1839, published at Hernando, and containing the following advertisement, viz: "Notice. The subscriber will not, as heretofore, receive the notes of the Tennessee banks in payment for lands; their principal banks in Nashville have suspended, and their smaller ones will probably soon follow the example; the notes of the Northern and Hernando banks, and of the Mississippi banks, of good standing, will be received.

Hernando, Oct. 16th, 1839.

EDW. ORNE."

The witness stated that the newspaper shown to him was published weekly; that he sent the said advertisement to the publishers on the 16th of October, 1839, with directions to give it three insertions; that he was a subscriber to the paper and received it regularly, and that he had not, up to the 7th of December, 1839, ordered the said advertisement to be discontinued, or published any counter notice. The witness further testified upon his cross-examination, that he was, at the date of the note sued on the president of the Hernando bank, and that he had lost considerably by the depreciation of its notes, which he had held; that shortly after he heard of the circumstances, which finally led to that depreciation, he was in Holly Springs, and there communicated the facts to a Mr. Anderson and a Mr. Goodman, of that place; and that he gave no information of the subject to the defendant. That, on the 18th of February, 1840, the defendant tendered to witness $3,500 in the post notes of the Hernando bank, in payment of the note sued on, and witness refused to receive them. The counsel for the plaintiffs then read to the jury as evidence in this cause the deposition of Hammond Whitney, which said deposition is in the words and figures following, to wit:

United States of America, district of Massachusetts:

Deposition of Hammond Whitney, of Boston, in the district aforesaid, taken before me, Charles Summers, a commissioner of the court of the United States, to be used in a case, wherein Ebenezer Irving and others are plaintiffs, and Maxwell Wilson is defendant, now depending in the district court of the United States for the northern district of Mississippi, at Pontotoc; and the said Whitney deposes as follows:

On the seventh day of December, A. D. 1839, I was present in the office of Edward Orne, agent for several land copies in Hernando, Desoto county, State of Mississippi, at the time aforesaid; I was in employ of said Orne as clerk; my duties as such kept me in the office of said Orne the greater part of the time; on the day aforesaid John L. Brown

came into the office of said Orne in company with two gentlemen, one of whom he introduced to said Orne as Maxwell Wilson; do not now recollect the name of the other gentleman; said Brown told said Orne that Wilson wished to purchase land; said Wilson inquired of said Orne the price of section numbered twenty-three, (23,) of township numbered one, (1,) in range numbered two, (2,) west; and the terms of sale. Said Orne replied, eight or eight and a half dollars per acre, payable one-third cash, balance one and two years, with interest from date. Said Wilson said he could pay all cash; that he did not like to give his note. Said Orne then agreed to take five thousand dollars in cash for said land. Said Wilson stated that he could pay one thousand dollars in Carolina money, and that he had some gold; asked said Orne what premium he would be willing to allow him for the gold. Said Orne said he did not wish to buy the gold; that twenty-five pr. ct. premium had been paid for gold at Pontotoc, but he could not give it. Said Wilson asked said Orne what money he would receive. Said Orne replied that he would receive *any current money—current Mississippi money*. Said Wilson asked said Orne if he would receive Hernando money. Said Orne replied that he would then receive any of its issues. I went into the adjoining office to procure the blank title bond, and the note book. I filled out the title bond and the note. Said Orne told said Wilson he would take his note, payable in three months, for the balance, four thousand dollars, allowing said Wilson time to exchange *of* his gold for other money, which time said Wilson asked of said Orne. Said Wilson asked said Orne what moneys he would receive. Said Orne replied, the issues of any bank which should be current at time of making the payment. This conversation took place, I think, before I went for the forms of title bond and note. Said Wilson asked said Orne to insert in the note that it should be payable in Hernando money. Said Orne refused to do so peremptorily; said he would not make the note payable in *any*, not even United States Bank notes, which, at the time of making said note, were considered fully equivalent to specie. The contract between said Orne, as agent, and said Wilson was, that the trustees of the New York, Mississippi, and Arkansas Land Company, by Edward Orne, their attorney in fact, in consideration of the sum of one thousand dollars, to them in hand paid, and a note of hand for the sum of four thousand dollars, to them executed by Maxwell Wilson, payable three months after date, bound themselves, on payment of said note of hand, to execute to said Wilson a deed, in fee simple, for a section of land numbered twenty-three, (23,) of township numbered one, (1,) in range numbered two, (2,) west. Said trustees, by their said attorney in fact, said Orne, executed and delivered to said Wilson a title bond for said land; and said Wilson executed and delivered to said trustees a note of hand for the sum of four thousand dollars, payable three months after date. Said writings embodied most fully and truly the agreement or contract between said trustees by their said attorney and

said Wilson. I made entry of sale of said land to said Wilson, as follows:

Date of sale.	Purchaser.	Residence.	Sec., &c.
Dec. 7, 1839.	Maxwell Wilson.	Marshall co.	23, T. 1, R. 2 W.

Amount.	Terms of sale.
$5,000.	Cash, $1,000; bal. $4,000, 3 mo's.

In making entries of sales, I was very careful to mention every particular of the contract, and especially any deviation from the usual terms of sale. If said Orne had agreed to receive any particular kind of money, at any future time, I should have noted such agreement in the sales book. After the papers between said Orne, agent, and said Wilson were signed, I do not remember to have heard any other or further agreement in relation to the money or currency to be received by said Orne in payment for the balance due from said Wilson. I was present during the whole time of making said contract between said Orne and said Wilson, except while absent to procure the forms of title bond and note book. If said Orne had agreed to receive any particular kind of money in payment of said Wilson's note, he would have mentioned it, as he had been, and requested me to be particular, in making entry of sales, to specify the terms of contract. After said Wilson had left, said Orne mentioned said Wilson's wish that he should make said note of hand payable in Hernando money, and spoke of it as a strange request; repeated, in effect, that he did not know what any bank might come to; that he would not make a note payable in any kind of bank notes. Said John L. Brown was present during part of the time while said conversation took place between said Orne and said Wilson, and making of said contract between said parties aforesaid. Said Wilson signed the said note of hand, given by him as aforesaid, with a full knowledge of its contents, and knowing that said Orne did refuse to insert in said note of hand that it should be payable in Hernando money, and that said Orne would not bind himself to take any particular kind of money. And the conversation in which said Wilson requested said Orne to agree to take Hernando money, and to make said note of hand payable in Hernando money, occurred previous to the signing of said note of hand by said Wilson. At the time of said sale of said land to said Wilson by said Orne, the issues of the Hernando Railroad and Banking Company were current. Subsequently, and I think in February, A. D. 1840, they did depreciate, until they were, in a great measure, uncurrent. Since that time, they have continued to depreciate, until they have become nearly worthless. I know of no other matter or thing that may tend to advantage of said plaintiff in said case. And further this deponent saith not.

HAMMOND WHITNEY.

Boston, May 19th, 1842.

Sworn to and subscribed before me.

CHARLES SUMNER,
Commissioner, &c.

UNITED STATES OF AMERICA,
District of Massachusetts, ss:

IRVING and others, }
vs. }
WILSON. }

I, Charles Sumner, a commissioner of the courts of the United States for the taking of depositions, &c., do hereby certify, to the honorable the district court of the United States, for the northern district of Mississippi, at Pontotoc, that, at the request of Alexander M. Clayton, esquire, the attorney of the plaintiff in the above entitled cause, who has made known to me that it is necessary to have the deposition of Hammond Whitney, a citizen of the State of Massachusetts, being at a greater distance from the place of trial of the said cause than one hundred miles, to be used in the said cause, I have caused the said Whitney to come before me, at my office, in the city of Boston, and district Massachusetts, and there carefully examined, and cautioned, and sworn him, the said Whitney, to tell the whole truth; and the said deposition was reduced to writing by the deponent in my presence, and by him subscribed in my presence. I further certify, that I am not of counsel or attorney for either party to the aforesaid suit, nor in any way interested in the event thereof, and that the reason for taking said deposition is, that the said witness lives at a greater distance than one hundred miles from the place of trial of the aforesaid suit. And I further certify, that the defendant in the above case, and his attorney, as I am informed and believe, do not live within one hundred miles from the place of the caption of this deposition. And I further certify, that after taking the said deposition I retained the same in my possession for the purpose of sealing up, directing, and forwarding the same, with my own hand, to the court aforesaid, which is done accordingly.

Given under my hand and seal, at Boston aforesaid, this 19th May, 1842.

CHARLES SUMNER, [L. S.]
Commissioner of the U. S. courts.

William L. Beard was then re-called by the defendant, and testified: That Hammond Whitney was not present during the conversation that passed between said Orne and the defendant, prior to the execution of the note sued on; that said Whitney was called in by said Orne from an adjoining room to fill up the note and title bond; that said Whitney left the room, in which said Orne and the defendant and witness were, soon after the note and bond had been executed, and was not present when the conversation mentioned by witness in his examination took place between witness, said Orne, and the defendant, in relation to the post notes of the Hernando Bank; after the execution of the note and bond, John Kincaid was then re-called by the defendant, and testified that, when he entered Orne's office, on the 7th of December, 1839, said Whitney was not present, and that said Whitney was not present during all the time that defendant remained in Orne's office, after witness entered. And this was all the testimony in this cause.

The plaintiffs, by their counsel, then requested the court to charge the jury as follows, to wit:

1st. That, to bind the plaintiffs by the act of their agent, the agent must have acted in the name of his principals.

2d. That, if the jury believe that the conversation and agreement, mentioned in the testimony, preceded the execution of the title bond and note, they were merged in the bond and note, and cannot now be set up as a defence to this action.

3d. That if the jury believe that no valid contract, founded upon a sufficient consideration, was made after the execution of the title bond and note, in regard to the kind of money to be received in payment of the note, they should find for the plaintiffs.

4th. That to render such latter contract available, as a defence, it must be a subsequent independent contract, by which the contract sued on was discharged, and which the plaintiffs could have enforced, and by which the contract sued on is annulled.

5th. That to render a contract in regard to land binding, it must be in writing.

6th. That to render a contract made with their agent, Orne, binding upon his principals, such contract must have been made according to the terms of the power of attorney given by the plaintiffs to said Orne.

7th. That a general agent for collection has no right to collect a debt due to his principals in any thing but the legal currency of the country, coin, unless he has some special authority to do so, which authority must be shown by the party setting up such payment.

8th. That such an agent has no right to agree to receive, in payment of a debt due to his principal, any thing but such legal currency, so as to bind his principal, unless he has some special authority to do so, which authority must be shown by the party setting up such agreement.

But the court refused to charge the jury, as requested by the plaintiffs, and instructed the jury as follows, to wit: That if the jury believed, from the testimony, that Orne, as the agent of the plaintiffs, after the execution and delivery of the note sued on, made an agreement with the defendant to receive in payment the notes of the Hernando Bank; and that the defendant, in pursuance of that agreement, procured the notes of that bank, and tendered them to Orne before the maturity of the note sued on, they should find for the defendant, otherwise they should find for the plaintiffs.

To the said instructions given by the court to the jury, and to the refusal of the court to charge the jury as requested by the plaintiffs, the plaintiffs, by their counsel, excepted at the time, before the jury retired from the box; and prayed that this, their bill of exceptions, may be signed and sealed by the court, which is done accordingly.

S. J. GHOLSON. [SEAL.]

Bond.

UNITED STATES OF AMERICA,
Northern district of Mississippi:

Know all men by these presents, that we, Ebenezer Irving, Daniel

Low, and Waldron B. Post, and Henry Anderson, are held and firmly bound unto Maxwell Wilson in the just and full sum of five hundred dollars, to be paid to the said Maxwell Wilson, his lawful attorney, executors, administrators, and assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this 29th day of December, A. D. 1842. The condition of the above obligation is such, that whereas, at a term of the district court of the United States for the northern district of Mississippi, commenced and held at the town of Pontotoc, in said district, on the first Monday of December, 1842, in a suit pending between said Ebenezer Irving, Daniel Low, and Waldron B. Post, plaintiffs, and said Maxwell Wilson, defendant, judgment was rendered by said court in favor of said Wilson, that he go hence, without day, and recover of said Ebenezer Irving, Daniel Low, and Waldron B. Post, the cost in that behalf expended to be taxed; aud the said Irving, Low, and Post, have sued out a writ of error from the Supreme Court of the United States to reverse said judgment. Now, if the said Irving, Low, and Post, shall prosecute their said writ of error to effect, and shall well and truly pay and satisfy the amount of said judgment, and all such damages, interests, and costs, as the said Supreme Court of the United States shall adjudge in the premises, if they, the said Irving, Low, and Post, shall fail to make good their plea, then, and in that case, this obligation to be void, otherwise to remain in full force and virtue.

EBENEZER IRVING, [SEAL.]
DANIEL LOW, [SEAL.]
WALDRON B. POST, [SEAL.]
By EDWARD ORNE, *Attorney in fact*, [SEAL.]
HENRY ANDERSON. [SEAL.]

Sealed and delivered in presence of—

I approve of the within and foregoing bond and security, Dec'r 31st, 1843.

S. J. GHOLSON, [SEAL.]
Judge U. S. D. C. for Mississippi.

United States of America:

Personally appeared before me, Gordentia Waite, commissioner of affidavits for the district court of the United States for the northern district of Mississippi, residing in the county of Marshall, the above named Edward Orne and Henry Anderson, and the said Edward Orne acknowledged that, as attorney in fact for the above named Ebenezer Irving, David Low, and Waldron B. Post, he signed, sealed, and delivered the foregoing bond, as their act and deed, on the date thereof; and the said Henry Anderson acknowledged that he signed, sealed, and delivered the said bond, on the date thereof, as his act and deed.

Given under my hand and seal, the 29th of December, 1842.

GORDENTIA WAITE, [SEAL.]
Com'r, &c.

Notice of motion in the words following, to wit:

To MAXWELL WILSON:

Take notice, that on the second day of the June term, 1845, of the district court of the United States for the northern district of Mississippi, at Pontotoc, or as soon thereafter as counsel can be heard, we shall move said court to supply, by the aid of parol testimony, the loss of a part of the pleadings in a cause lately determined in said court, wherein we were plaintiffs and you were defendant.

January 9th, 1845.

EBENEZER IRVING,
DANIEL LOW,
WALDRON B. POST,
By WM. F. STEARNS,
their attorney.

Marshal's return: "Came to hand 10th of Jan'y, 1845. Executed the 3d day March, 1845.

A. K. McCLUNG, *Marshal.*
W. EPPES, *D. Marshal.*"

Marshal's fees: Executing notice, $2 00; mileage, 3 75—$5 75.

Motion filed and entered, January 2d, 1845, as follows, to wit:

EBENEZER IRVING, DANIEL LOW, and WALDRON B. POST, vs. MAXWELL WILSON. } 1,036.

The plaintiffs in this cause move the court to supply, by the aid of parol testimony, the loss of the missing pleadings in this cause.

GHOLSON & STEARNS, *for motion.*

June 2, 1845.

Proceedings had by the court in the foregoing cause at the June term thereof, 1845, in the words and figures following, to wit:

EBENEZER IRVING and al. vs. MAXWELL WILSON.

Thursday, June the 5th, 1845.

This day came the parties, by their attorneys, and thereupon came on to be heard the motion of the plaintiffs to supply, by the aid of parol testimony, the parts of the pleadings that were missing in this cause; and it appearing to the satisfaction of the court, that the defendant has been regularly notified of this motion; and it being proved that the original declaration in this cause, and the note of the defendant upon which this suit was founded, have been lost and cannot be found in the office of the clerk of this court, although diligent search and enquiry has been made therefor; whereupon the plaintiffs, by their attorneys, produced in court a declaration and copy of a note, which, it was proved, were substantially copies of the declaration and note so lost as aforesaid. It is therefore ordered by the court, that the said motion be sustained,

and that the said declaration, and copy of a note produced by the plaintiffs be filed by the clerk in lieu of the original declaration and note in this cause, and made a part of the record in this cause. Whereupon the said defendant, by attorney, excepted to the decision of the court.

Bill of exceptions referred to in the foregoing order, filed by the defendant's attorneys in the words and figures following, to wit:

The United States of America, the northern district of Mississippi, district court of the United States for said district, June term, 1845.

EBENEZER IRVING, DANIEL LOW, and WALDRON B. POST,
vs.
MAXWELL WILSON.

Be it remembered, that, on this day, being Thursday of said term, the plaintiffs in this cause asked leave of the court to supply, by parol proof, the original declaration and note upon which the suit was instituted; when it was shown to the court that plaintiffs had notified defendant that said motion would be made. Ragsdale, clerk of said court, being sworn, stated, that shortly after the December term, 1842, when said cause was tried and finally disposed of in this court, the declaration and note upon which said suit was brought was lost or mislaid, and that he has not been able to find them since, though diligent search has been made by him.

William F. Stearns proved that he drew the original declaration, and that, to the best of his recollection, said declaration and note are in substance as follows:

"United States of America, State of Mississippi, district court of the United States for the northern district of said State, December term, 1840.

Ebenezer Irving, Daniel Low, and Waldron B. Post, citizens of the State of New York, by attorney, complain of Maxwell Wilson, a citizen of the State of Mississippi, residing in the northern district thereof, who is in custody, &c., of a plea of trespass on the case upon promises: For that whereas, heretofore, to wit, on the 7th day of December, 1839, at Hernando, to wit, at the district aforesaid, the said defendant made and executed his certain promissory note in writing, bearing the date aforesaid, and thereby promised in three months (meaning in three months after the said date) to pay to the plaintiff, by the name and description of E. Irving, Dan'l Low, and W. B. Post, or order, the sum of four thousand dollars, for value received, and then and there delivered said promissory note to the plaintiffs, and thereby undertook and promised to pay the same, according to the tenor and effect thereof.

And whereas also, heretofore, to wit, on the 20th day of November, 1840, at the district aforesaid, the said defendant was indebted to the plaintiffs in the sum of five thousand dollars, for money found to be due from the said defendant to the plaintiffs upon an account stated between them; and also in the further sum of five thousand dollars, for money

before that time had and received by the said defendant to the use of the plaintiffs; and also in the further sum of one thousand dollars, for money due as interest upon certain sums of money due from said defendant to the plaintiffs; and, being so indebted, he, the said defendant, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at the district aforesaid, undertook and promised to pay the said several sums of money in this count mentioned, to the plaintiffs, on request. Yet the said defendant has disregarded his said several promises, in form aforesaid made, and has not, altho' often requested so to do, paid to the plaintiffs, or to either of them, the said several sums of money, or any or either of them, or to any part thereof, but to pay the same, or any part thereof, he hath hitherto wholly neglected and refused, and still doth neglect and refuse so to do, to the damage of the plaintiffs five thousand dollars; and therefore they sue.

A. M. CLAYTON,
Att'y for plff's.

"Copy of note sued on.

"$4,000 dolls., cts.

"HERNANDO, *December 7th*, 1839.

"For value received, I, the subscriber, of the county of Lincoln, and State of North Carolina, promise to pay E. Irving, Dan'l Low, and W. B. Post, or order, four thousand dollars cents, in three months.

"Signed, MAXWELL WILSON.

"Endorsed on the back, Hernando, 7th Dec'r, 1839. Credit the within note by five hundred dollars.

"Signed, E. ORNE,
Per HAMMOND WHITNEY."

And, upon the proof aforesaid, the said court, the honorable Samuel J. Gholson presiding, ordered said paper to be filed as part of the record in said cause, and to supply the place and have the effect of the original declaration and note. To all of which said defendant excepts, and tenders this his bill of exceptions, which is signed and sealed by the court, and ordered to be enrolled and made part of the record in this cause. S. J. GHOLSON. [SEAL.]

United States of America, northern district of Mississippi:

I, G. M. Ragsdale, clerk of the district court of the United States for the northern district of Mississippi, certify, that the above and foregoing fifty-two pages contain a full, true, and complete transcript of all the proceedings had in the aforesaid cause in said district court, as the same appears of record and on file in my office.

Given under my hand, and the seal of said court, at office in
[SEAL.] Pontotoc, this, the 24th day September, A. D. 1845.

G. M. RAGSDALE, *Clerk.*

Writ of error.

UNITED STATES OF AMERICA:

The President of the United States to the judge of the district court of the United States, for the northern district of Mississippi, greeting:

Because in the records and proceedings, as also in the rendition of the judgment of a plea which is in the said district court, before you, between Ebenezer Irving, Daniel Low, and Waldron B. Post, plaintiffs, and Maxwell Wilson, defendant, a manifest error hath happened to the great damage of the said Ebenezer Irving, Daniel Low, & Waldron B. Post, as by their complaint appears. We being willing that error, if any, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, that if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of January next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, according to law and custom of the United States, should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court, the second Monday in January, in the year [SEAL.] of our Lord one thousand eighty hundred and forty-five, and of the independence of the United States the 69th.

Issued the 8th day of August, 1845.

G. M. RAGSDALE,
Clerk of the district court of the United States, for the northern district of Miss.

Citation.

UNITED STATES OF AMERICA,
Northern district of Mississippi:

To Maxwell Wilson, esq., greeting: You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be held at Washington on the first Monday in January next, pursuant to a writ of error filed in the clerk's office of the district court of the United States, for the northern district of Mississippi, wherein Ebenezer Irving, Daniel Low, and Waldron B. Post, are plaintiffs, and you are defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness Samuel J. Gholson, judge of the district court of the United States, for the northern district of Mississippi, at Pontotoc, the 8th day of August, 1845, and in the 70th year of the American independence.

S. J. GHOLSON.

Executed the 29th of October, 1845.

A. A. KINCANNON, *Marshal*.
By W. EPPES, *D. Marshal*.

Marshal's fees—

Service of notice - - - - -	$2 00
Entry and return - - - - -	50
Copy - - - - - -	50
Mileage - - - - - -	3 50
	$6 50

Filed, 15th December, 1845.